Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1999

Constitution of 1879 as Amended

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

1999–2000 Regular Session
1999–2000 First Extraordinary Session

Compiled by
BION M. GREGORY
Legislative Counsel

CHAPTER 86

An act to amend Sections 32228.1 and 32239.5 of, and to amend the heading of Article 3.6 (commencing with Section 32228) and Article 3.8 (commencing with Section 32239.5) of Chapter 2 of Part 19 of, the Education Code, to repeal Sections 8 and 9 of Assembly Bill 1660 of the 1999–2000 Regular Session, and to amend Section 7 of Assembly Bill 1661 of the 1999–2000 Regular Session, relating to governmental functions.

[Approved by Governor July 12, 1999. Filed with Secretary of State July 12, 1999.]

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

SECTION 1. The heading of Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of the Education Code, as added by Assembly Bill 1113 of the 1999–2000 Regular Session, is amended to read:

Article 3.6. Carl Washington School Safety and Violence Prevention Act

SEC. 2. Section 32228.1 of the Education Code, as added by Assembly Bill 1113 of the 1999–2000 Regular Session, is amended to read:

32228.1. (a) The Carl Washington School Safety and Violence Prevention Act is hereby established. This statewide program shall be administered by the Superintendent of Public Instruction, who shall provide funds to school districts serving pupils in any of grades 8 to 12, inclusive, for the purpose of promoting school safety and reducing schoolsite violence. As a condition of receiving funds pursuant to this article, an eligible school district shall certify, on forms and in a manner required by the Superintendent of Public Instruction, that the funds will be used as described in this section.

(b) From funds appropriated in the annual Budget Act or any other measure, funds shall be allocated to school districts on the basis of enrollment of pupils in grades 8 to 12, inclusive, for any one or more of the following purposes:

(1) Providing schools with personnel, including, but not limited to, licensed or certificated school counselors, school social workers, school nurses, and school psychologists, who are trained in conflict resolution. Any law enforcement personnel hired pursuant to this article shall be trained and sworn peace officers.

(2) Providing effective and accessible on campus communication devices and other school safety infrastructure needs.

(3) Establishing an in-service training program for school staff to learn to identify at-risk pupils, to communicate effectively with those pupils, and to refer those pupils to appropriate counseling.

(4) Establishing cooperative arrangements with local law enforcement agencies for appropriate school-community relationships.

(5) For any other purpose that the school or school district determines that would materially contribute to meeting the goals and objectives of current law in providing for safe schools and preventing violence among pupils.

SEC. 3. The heading of Article 3.8 (commencing with Section 32239.5) of Chapter 2 of Part 19 of the Education Code, as added by Assembly Bill 1113 of 1999–2000 Regular Session, is amended to read:

Article 3.8. Machado School Violence Prevention and Response Task Force

SEC. 4. Section 32239.5 of the Education Code, as added by Assembly Bill 1113 of the 1999–2000 Regular Session, is amended to read:

32239.5. (a) This article shall be known, and may be cited, as the Machado School Violence Prevention and Response Act of 1999.

(b) A School Violence Prevention and Response Task Force is hereby established, which shall consist of the following members:

(1) The Superintendent of Public Instruction, the Attorney General, the Director of the Office of Criminal Justice Planning, and the Secretary for Education shall be ex officio voting members of the School Violence Prevention and Response Task Force, and shall serve as cochairs of the task force.

(2) Twelve members representing educators, health care practitioners, and members of the law enforcement community, each with expertise in school-based crisis prevention and response appointed as follows:

(A) The Director of the Office of Criminal Justice Planning and the Attorney General shall each appoint three members to the task force. These appointments shall include representatives of the law enforcement and victims' services community. These appointments may include persons with expertise in juvenile justice, gang violence prevention, juvenile probation, victim assistance programs, crisis management, or academic experts in criminology or juvenile delinquency.

(B) The Superintendent of Public Instruction and the Secretary for Education shall each appoint three members to the task force. These appointments shall include representative of the education and health care practitioner communities. These appointments may include classroom educators, school administrators, school counselors, school psychologists, parents, pupils, mental health

providers, or academic experts in child development or violence prevention.

(c) The members of the task force may not receive a salary for their services but shall be reimbursed for their actual and necessary travel and other expenses incurred in the performance of their duties.

(d) The task force shall do all of the following:

(1) Analyze and evaluate current statutes and programs in the area of school-based crisis prevention and response.

(2) Make appropriate policy recommendations on how to enhance state and local programs and training to adequately prepare school districts and county offices of education to meet the challenges stemming from disruptive and violent acts, or both, on or near school campuses. These recommendations shall include a discussion regarding the manner in which the recommendations may be implemented within existing resources.

(3) Suggest methods for training school personnel on how to recognize risk indicators for pupils that could eventually lead to violence. These suggested methods shall include how to refer pupils to trained personnel, such as school psychologists, counselors, mental health providers, or other designated appropriate staff.

(4) Hold at least two public meetings.

(5) Report its findings and policy recommendations to the Legislature and the Governor on or before April 10, 2000.

(e) Each of the cochairs shall have the authority to convene subcommittee meetings. However, any findings or recommendations made by a subcommittee, or by any of the other members of the task force, shall be approved by at least three of the four voting members of the task force in order to be incorporated in the report described in paragraph (5) of subdivision (c).

(f) The Office of Criminal Justice Planning shall make staff resources available to the task force.

SEC. 5. Section 8 of Assembly Bill 1660 of the 1999–2000 Regular Session shall not become operative and is repealed.

SEC. 6. Section 9 of Assembly Bill 1660 of the 1999–2000 Regular Session shall not become operative is repealed.

SEC. 7. Section 7 of Assembly Bill 1661 of the 1999–2000 Regular Session is amended to read:

Sec. 7. For purposes of allocating one-half of the moneys appropriated by Item 9210-118-0001 of the Budget Act of 1999, all of the following apply:

(a) A county is prohibited from receiving any portion of the moneys unless the county complies with all of the following:

(1) No later than October 1, 1999, the county auditor reports to the Controller and the Director of Finance the total amount of ad valorem property tax revenue allocated from the county's Educational Revenue Augmentation Fund to school districts,

community college districts, and county superintendents of schools for the 1998–99 fiscal year.

(2) The county board of supervisors adopts an ordinance or resolution that specifies each amount of ad valorem property tax revenue shifted from a local agency within the county to the county's Educational Revenue Augmentation Fund for the 1998–99 fiscal year, and the chairperson of the county board of supervisors reports those revenue shift amounts to the Controller and the Director of Finance in a manner that identifies the revenue shift amount for each local agency in the county.

(3) The county board of supervisors adopts an ordinance or resolution pursuant to which the county agrees to both of the following:

(A) The county will allocate its share of the appropriated moneys subject to this section in accordance with subdivision (c).

(B) The county will not, in connection with either paragraphs (1) or (2) of this subdivision or subdivision (c), make any claim for reimbursement of state-mandated local costs.

No later than December 1, 1999, the county board of supervisors shall transmit the ordinance or resolution adopted pursuant to this paragraph to the Director of Finance. The Controller shall promulgate guidelines for the making of reports as required by this subdivision.

(b) For each county that complies with all of the conditions set forth in subdivision (a), the Controller shall do both of the following:

(1) Perform the following calculations:

(A) Divide the amount reported by the county auditor in accordance with paragraph (1) of subdivision (a) by the total of all of the amounts reported by counties in accordance with paragraph (1) of subdivision (a).

(B) Divide the amount appropriated by Item 9210-118-0001 of the Budget Act of 1999 by two.

(C) Multiply the amount determined in accordance with subparagraph (A) by the amount determined in accordance with subparagraph (B).

For purposes of performing these calculations, the Controller shall review the information submitted by the county. If, consistent with information available from any other reliable source, the Controller determines that the information may be inaccurate, the Controller may request the Director of Finance to review the amount reported by the county in accordance with paragraph (1) of subdivision (a). The Director of Finance may direct the Controller to adjust the amount reported to the Controller by the county in accordance with paragraph (1) of subdivision (a). The Controller shall inform the county of any adjustment that is so made.

(2) No later than February 1, 2000, the Controller shall, from the appropriated revenues subject to this section, allocate to the county the amount determined for that county pursuant to paragraph (1).

(c) In each county that receives revenue in accordance with subdivision (b), the county auditor shall allocate that revenue to those local agencies among the county, and cities and special districts in the county, that contributed a positive amount to the county's Educational Revenue Augmentation Fund for the 1998–99 fiscal year. The allocation share for each recipient local agency shall be determined pursuant to the following calculations:

(1) Divide the amount of revenue shifted for the 1998–99 fiscal year from the local agency to the county's Educational Revenue Augmentation Fund by the total amount of revenue shifted for the 1998–99 fiscal year to the county's Educational Revenue Augmentation Fund by all local agencies in the county contributing a positive amount to that fund.

(2) Multiply the ratio determined pursuant to paragraph (1) by the amount of revenues allocated to the county pursuant to paragraph (2) of subdivision (b).

SEC. 8. The Governor is hereby requested to appoint a task force to make recommendations on how to maximize the number of California's counted in the 2000 census and to implement a census outreach program.

CHAPTER 87

An act to add Chapter 4.75 (commencing with Section 1647) to Division 2 of the Health and Safety Code, relating to human milk.

[Approved by Governor July 12, 1999. Filed with Secretary of State July 12, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Extensive research, particularly in recent years, documents diverse and compelling advantages to infants, mothers, families, and society, as a result of breast feeding, and the use of human milk for infant feeding, including health, nutritional, immunologic, developmental, psychological, social, economic, and environmental benefits.

(b) Milk banks play a critical role in serving the needs of ill or premature infants whose mothers are unable to supply their own milk, due to illness or use of medication. Many of these infants cannot tolerate any type of formula, and would not survive without banked human milk.

(c) Milk banks follow strict procedures and protocols for milk collection, processing, storage, and distribution, and are licensed as tissue banks by the State Department of Health Services.

(d) The high cost of liability insurance places a heavy burden on existing milk banks, and has significantly impeded the creation of new ones.

(e) Section 1606 of the Health and Safety Code provides that the procurement, processing, distribution, and use of human whole blood and whole blood derivatives is the rendition of a service. It is the intent of the Legislature to consider nonprofit milk banks to be providing a service, with respect to the procurement, processing, distribution, and use of human milk.

SEC. 2. Chapter 4.75 (commencing with Section 1647) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 4.75. HUMAN MILK

1647. The procurement, processing, distribution, or use of human milk for the purpose of human consumption shall be construed to be, and is declared to be for all purposes, the rendition of a service by each and every nonprofit organization and its employees participating therein, and shall not be construed to be, and is declared not to be, a sale of the human milk for any purpose or purposes.

CHAPTER 88

An act to add Section 10123.135 to the Insurance Code, relating to health insurance.

[Approved by Governor July 12, 1999. Filed with Secretary of State July 12, 1999.]

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

SECTION 1. Section 10123.135 is added to the Insurance Code, to read:

10123.135. (a) Every disability insurer that covers hospital, medical, or surgical expenses and that reviews and approves the medical necessity or appropriateness of requests by providers prior to, or concurrently with, the provision of health care services to insureds, shall prominently indicate on each insured's identification card whether a separate telephone number must be called to verify eligibility for benefits and coverage.

(b) A written notice shall accompany the initial mailing of the insured's identification card modified pursuant to subdivision (a). The notice shall indicate that the insured's identification card includes a telephone number that may be used to verify eligibility for benefits and coverage. The notice shall also inform the insured that review and approval of a health care service based on medical

necessity or appropriateness does not constitute eligibility for benefits and coverage pursuant to the policy or contract.

CHAPTER 89

An act to amend Sections 3, 5, 12, 13, and 13.1 of, to add Section 12.1 to, and to repeal Section 7 of, the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), relating to the Lake County Flood Control and Water Conservation District.

[Approved by Governor July 12, 1999. Filed with Secretary of State July 12, 1999.]

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

SECTION 1. Section 3 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 3. (a) The board of supervisors of the district created by this act, acting in the manner and within the terms provided in Section 12 of this act, may establish, modify, and dissolve zones within the district without reference to boundaries of other zones, and may institute, operate, and maintain projects for the specific benefit of those zones.

(b) Before proceeding with the establishment, modification, or dissolution of any zone, the exterior boundaries of which will include any land lying within the exterior boundaries of any chartered or incorporated city within the district, the board of supervisors of the district shall first obtain the concurrence of that city to conduct that proceeding; and that concurrence shall be evidenced by a resolution or ordinance adopted by a majority of the members of the city council of that city or by a vote of a majority of the qualified electors residing in that city or portion of that city to be included in that zone, voting at any regular or special election on the proposition; and the election shall be held as provided by law for holding a municipal election in that city and the cost of the election shall be paid by the city.

SEC. 2. Section 5 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and may do all of the following:

1. Have perpetual succession.
2. Sue and be subject to suit in the name of said district.
3. Adopt a seal.
4. Acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and hold, use, enjoy, let, and dispose of

real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, water and water rights, and privileges and construct, maintain, alter, and operate any and all works or improvements, within or outside the district, necessary or proper to carry out any of the objects of purposes of this act and convenient to the full exercise of its powers, and complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

5. Conserve all waters within the district, and control the flood and storm waters of the district and the flood and storm waters of streams that have their sources outside the district, but which streams and floodwaters thereof, flow into the district, and protect from damage from those flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in the district, and the watercourses outside the district of streams flowing into the district, and to develop waters within or outside the district for domestic irrigation, industrial, and recreational uses, and construct works therefor, including works for the storage and delivery of water; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although the powers may be of the same nature as the powers of the district. Any other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which that other political subdivision has an interest, or for the use, or joint use, of property or facilities in which the district has an interest.

6. Cooperate and act in conjunction with the federal government, the state, or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Lake or adjacent counties, or with any other agencies, in the construction of any work for the storage or delivery of all waters within or outside the district for domestic, irrigation, industrial, and recreational uses and for the conservation of waters within the district, for the controlling of flood or storm waters of or flowing into the district, or for the protection of life or property in the district.

7. Carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to the beneficial use of waters within or outside the district, including domestic, irrigation, industrial, and recreational uses and the conservation of water and the control of floods both within and outside the district, and for those purposes the district shall have the right of access through its authorized representatives to all properties within the district. The district, through its authorized representatives may enter upon those lands and make examinations, surveys, and maps thereof.

8. Enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; acquire by purchase, lease, contract, gift, devise, or other legal means all lands and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of the works, enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district.

9. Incur indebtedness and issue bonds in the manner provided in this act.

10. Cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner provided in this act.

11. Make contracts, and employ labor, and do all acts necessary for the full exercise of all powers vested in the district or any of the officers thereof by this act.

12. Exercise the right of eminent domain, either within or outside the district, to take any property necessary to carry out any of the objects or purposes of this act. The district in exercising that power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility that is required to be moved to a new location.

The district shall not condemn property outside the County of Lake unless the consent of the governing board of the county, in which the property to be condemned is located, has first been obtained.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for that city and county or municipal utility district, or as affecting the absolute control of any properties of that city and county or municipal utility district necessary for that water supply and nothing herein contained shall be construed as vesting any power of control over those properties in the district or in any officer thereof, or in any person referred to in this act.

13. Provide for the operation and maintenance of any works of any kind or channelways, which may be built or operated by the state or the federal government without cost to the district, for the control or disposition of flood and storm waters within the district whether those waters originate within or outside the district.

14. Contract with the County of Lake, because of the interest of the County of Lake in the general welfare and preservation and

promotion of land values in the county and in the maintenance, construction and improvement of public roads, bridges and other county property within any zone that may be damaged or destroyed by those flood and storm waters and that will be protected by proper control and disposition of those waters, for the participation by that county, on a percentage or other appropriate basis, in the amount or amounts that may be taxed or assessed from time to time against any lands in any zone by any taxing or assessing agency or authority, including the district, to provide funds for the operation and maintenance of any works of any kind or channelways which may be built, maintained or operated by the state or the federal government or the district for the benefit of that zone; and the County of Lake may enter into that contract with the district.

15. Levy assessments in any zone, on the basis of benefits as provided in Section 13 or 13.1 of this act, to raise funds for payment of expenses of operation and of works or channelways in that zone and the cost of levying and collecting those assessments.

16. Levy and collect special taxes in the district or any zone in accordance with Section 13 of this act.

17. Levy and collect benefit assessments in the district or any zone in accordance with Section 13 of this act.

SEC. 3. Section 7 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is repealed.

SEC. 4. Section 12 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 12. (a) The board may institute proceedings for the formation of single zones and also institute projects for single zones and joint projects for two or more zones that may involve the financing, constructing, maintaining, operating, extending, repairing or otherwise improving any work or improvement of common benefit to that zone or participating zones. The board may also institute separate projects for operation and maintenance of works or improvements for any zones whether the works or improvements have been constructed by the board or by the state or the federal government or both. Any zone shall include, as far as practicable, all lands that will be benefited by any project proposed for that zone.

(b) Proceeding for the formation of any zone and for the establishment of any project for that zone may be conducted jointly. For the purpose of establishing any zone or participating zones or of acquiring authority to proceed with that project, the board shall adopt a resolution specifying its intention to establish that zone or zones or to undertake that project, or both thereof, together with the engineering and other estimates of the cost of same to be borne by the particular zone and, in the case of participating zones, the proportionate cost to be borne by each of the participating zones and fixing a time and place for public hearing of that resolution; and that

resolution shall refer to a map or maps showing the boundaries of each zone and the general location and general construction of that project. The resolution shall also describe the boundaries of any zone proposed to be established; otherwise adequate reference to any established zone involving the project shall be sufficient.

(c) Notice of the hearing shall be given by publication pursuant to Section 6066 of the Government Code in a newspaper of general circulation, circulated in that zone or each of those participating zones, if there be such newspaper, and if there be no such newspaper then by posting notice for two consecutive weeks prior to that hearing in five public places designated by the board, in that zone or in each of those participating zones. Publication shall be completed at least seven days before the date of the hearing. The notice shall contain a copy of the resolution. The notice shall designate a public place in the zone or in each of the participating zones where a copy or copies of the map or maps of each proposed single zone and any project for a single zone or the joint project for participating zones may be seen by any interested person, and the map shall be posted in each of the public places so designated in the notice at least two weeks prior to the hearing.

(d) At the time and place fixed for the hearing, or at any time to which the hearing may be continued, the board shall consider all written and oral objections to the proposed zone or project.

(e) If it is shown that any land is improperly included in the boundaries proposed for the zone the board, in its order for formation of the zone, shall exclude the land therefrom. If the board shall conclude that lands that will be benefited by the zone are improperly omitted from the proposed zone and the owners thereof have not appeared at the hearing the board shall continue the hearing and direct that notice be given to nonappearing landowners to appear before the board and show cause why their lands should not be included in the proposed zone. The notice shall be given either by publication or posting in the same manner and for the same period as the original notice of hearing or by personal service on each landowner. Any personal service shall be made at least three days prior to the date fixed for further hearing. Proof of the notice given shall be filed with the clerk of the board on or before the day to which the hearing is continued.

(f) The board may continue the hearing from time to time, by order entered upon its minutes, to the end that a full hearing may be had.

(g) If an order for formation of the zone is made at the conclusion of the hearing the order shall describe the exterior boundaries of the zone as determined by the board, shall be signed by the chairman of the board and attested by the clerk thereof and be recorded by the county recorder in his official records.

(h) Upon the conclusion of the hearing, the board may abandon the proposed zone or project or proceed with the same, unless prior

to the conclusion of the hearing a written protest against the proposed zone or project signed by a majority in number of the holders of title to real property, or assessable rights therein, or evidence of title thereto, representing one-half or more of the assessed valuation of the real property within the zone or within any of the participating zones, be filed with the board, in which event further proceedings relating to the zone or project shall be suspended for not less than six months following the date of the conclusion of the hearing, or the proceeding may be abandoned in the discretion of the board.

(i) For the purposes of this section, the last equalized assessment roll of the County of Lake next preceding the filing of the protest shall be prima facie evidence as to the ownership of real property, the names and numbers of the persons who are the holders of title or evidence of title, or assessable rights therein, and as to the assessed valuation of real property within the zone or within any of the participating zones for which the project was initiated.

(j) Executors, administrators, special administrators, and guardians may sign the protest provided for in this act on behalf of the estate represented by them. If the property is assessed in the name of those representatives, that fact shall establish the right of those representatives to sign the protest; if assessed in the name of the decedent, minor or incompetent person, certified copies of the letters or other evidence as may be satisfactory to the board must be produced.

(k) If real property appears to be owned in common or jointly or by a partnership, or if letters of representatives of decedents, minors or guardians are joint, only one of the owners or representatives or partners may sign the protest for all joint owners or representatives or partners; provided, that the party claiming the right to protest for all produces the written consent of his or her coowners or representatives or partners so to do, duly acknowledged by the consenting coowners or representatives or partners in the manner that deeds of real property are required to be acknowledged to entitle those deeds to be recorded in the recorder's office of the county. Any joint owner or partner or tenant in common may sign and thus be counted independently for this proportionate share of the assessed valuation of that real property as shall be determined by division of the evaluation by the number of jointly interested owners thereof.

(*l*) If real property is assessed in the name of a trustee or trustees, the trustee or trustees shall be deemed to be the person entitled to sign the protest, and if assessed in the name of more than one trustee the right to sign the protest shall be determined in like manner as above provided with respect to coowners.

(m) The protest of any public or quasi-public corporation, private corporation or unincorporated association, may be signed by any person authorized by the board of directors or trustees or other

managing body thereof, which authorization shall be in writing; and a proxy executed by an officer or officers thereof, attested by its seal and duly acknowledged, shall constitute sufficient evidence of that authority, and shall be filed with the board.

(n) The owner of any real property or interest therein, appearing upon the assessment roll, which has been assessed in the wrong name or to unknown owners, or which has passed from the owner appearing as the on the last equalized assessment roll, since the same was made, shall be entitled to sign the protest represented thereby, either by the production of a proxy from the former owner, or by furnishing evidence of his or her ownership by a conveyance duly acknowledged showing the title to be vested in the person claiming the right to sign the protest, accompanied by a certificate of a competent searcher of titles, certifying that a search of the official records of the county, since the date of the conveyance, discloses no conveyance or transfer out from the grantee or transferee named in the conveyance.

(o) If the real property has been contracted to be sold, the vendee shall be entitled to sign the protest, unless that real property is assessed in the name of the vendor, in which event the vendor shall be entitled to so do.

(p) The board may inquire and take evidence for the purpose of identifying any person claiming the right to sign the protest as being the person shown on the assessment roll or otherwise as entitled thereto. And, unless satisfactory evidence is furnished, the right to sign the protest may be denied.

(q) In its resolution of intention on the institution of any project for operation and maintenance of works or improvements for any zone and in the order of adoption of the project, the board shall fix a total amount that it will raise annually thereafter by assessments under Section 13.1 to pay the expenses of that operation and maintenance.

(r) If the board determines that it is necessary to increase the annual assessments to meet operational and maintenance requirements of the works or improvements of any zone, it may increase the assessments in the manner in which the assessments were originally established and in accordance with other applicable provisions of law.

SEC. 5. Section 12.1 is added to the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), to read:

12.1. (a) The board may institute proceedings for the modification or dissolution of a zone or zones.

(b) Whenever the board determines that it is necessary or desirable for any zone or zones formed pursuant to this act to be modified or dissolved, it shall adopt a resolution declaring its intention to modify or dissolve the zone or zones. The resolution of intention shall state all of the following:

(1) The intention of the board to modify or dissolve the proposed zone or zones.

(2) The reason why the zone or zones is proposed to be modified or dissolved.

(3) That a map or maps showing the exterior boundaries of the zone or zones proposed to be modified or dissolved, is available for inspection by any interested person, at a designated public place.

(4) The time and place for a hearing by the board on the proposed modification or dissolution of the zone or zones.

(5) That at the time and place fixed for the hearing, or at any time to which the hearing may be continued, the board shall consider all written or public testimony regarding the proposed modification or dissolution of the zone or zones.

(c) The notice of hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation published in the district, pursuant to Section 6066 of the Government Code, the publication of which shall be at least 14 days prior to the time fixed for the hearing.

(d) At the time and place so fixed, or at any time or place to which the hearing is continued, the board shall hold the hearing provided for by the resolution of intention, at which time any interested person may appear and be heard concerning any matter set forth in the resolution of intention or any matters material thereto. The board shall consider all written and oral objections to the modification or dissolution of the zone or zones. The board may continue the hearing from time to time, by order entered upon its minutes, to the end that a full hearing may be had.

(e) (1) Upon the conclusion of the hearing, the board may abandon the proposed modification or dissolution of the zone or zones or proceed with the proposed modification or dissolution, unless prior to the conclusion of the hearing a written protest against the proposed modification or dissolution of the zone or zones, that is signed by a majority in number of the holders of title to real property, or assessable rights therein, or evidence of title thereto, representing one-half or more of the assessed valuation of the real property within that zone or within any of the participating zones, is filed with the board.

(2) If a written protest is filed, further proceedings relating to that zone or zones shall be suspended for not less than six months following the date of the conclusion of the hearing, or, at the discretion of the board, the proceeding may be abandoned.

(f) If the board makes an order for modification or dissolution of the zone or zones at the conclusion of the hearing, the board, by resolution, shall state that the exterior boundaries of the zone or zones are set forth upon a map on file with the clerk to the board and shall declare the zone or zones modified or dissolved.

(g) For the purposes of this section, the last equalized assessment roll of the County of Lake before the filing of the protest shall be

prima facie evidence as to the ownership of real property within the zone or zones. Determination of protest rights shall be in the manner set forth in Section 12.

SEC. 6. Section 13 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

13. The board, in any year, may do all of the following:

1. Levy ad valorem taxes or assessments upon all property in the district to pay the general administrative costs and expenses of the district, and to carry out any of the objects or purposes of this act of common benefit to the district.

2. Levy ad valorem taxes or assessments upon all property in each or any of the zones and participating zones to pay the costs and expenses of carrying out, constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works or improvements established or to be established within or on behalf of the respective zones, according to the benefits derived or to be derived by the respective zones.

3. Levy assessments upon all real property in each or any of the zones, according to the special benefits derived or to be derived by those properties, to pay the cost and expenses of carrying out any of the objects or purposes of this act of special benefit to those properties, including the constructing, maintaining, operating, extending, repairing or otherwise improving any or all works of improvement established or to be established within or on behalf of the respective zone or zones.

4. Levy and collect special taxes in the district or any zone, pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code, to pay the costs of carrying out, constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works of improvement in the district or zone and the cost of levying and collecting those special taxes.

For the purposes of this provision, "special tax" means any special tax that applies uniformly to all taxpayers or all real property within the district or any zone.

5. Levy and collect benefit assessments in the district or any zone, pursuant to Chapter 6.4 (commencing with Section 54703) of Part 1 of Division 2 of Title 5 of the Government Code, to pay the costs of constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works of improvement in the district or zone and the cost of levying and collecting those benefit assessments.

In the event of project cooperation with any of the governmental bodies as authorized in subdivision 6 of Section 5 of this act, and requiring the making of a contract with any governmental body for the purposes set forth in that subdivision 6 by the terms of which work other than operation and maintenance is to be performed by that

governmental body in any specified zone or participating zones, for the particular benefit thereof, and by the proposed contract the district is to pay to that governmental body, a sum of money in consideration or subvention for the performance of the work by that governmental body, the board may, after proceedings in the manner prescribed in Section 12 of this act, levy and collect either an ad valorem tax, special tax, assessment, or a special benefit assessment upon the real property in that zone, or those participating zones, whereby to raise funds to enable the district to make such payment, in addition to other taxes or assessments herein otherwise provided for.

The taxes or assessments shall be levied and collected together with, and not separately from, taxes for county purposes, and the revenues derived from taxes or assessments shall be paid into the county treasury to the credit of the district, or the proper zone or zones thereof.

The board may control and order the expenditure for the purposes of all funds so raised; provided, however, that no revenues, or portions of the revenue, derived in any zone from the taxes or assessments levied under the provisions of subdivision 2, 3, or 4 of this section shall be expended for constructing, maintaining, operating, extending, repairing, or otherwise improving any works or improvements located in any other zone, except in the case of joint projects, or for projects authorized or established outside the zone or zones, but for the benefit thereof. In cases of projects joint to two or more zones, the zones shall become, and shall be referred to as, participating zones.

SEC. 7. Section 13.1 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 13.1. If, pursuant to Section 12, a zone has been established and the project adopted for the zone is that of operation and maintenance of works or improvements that have been constructed by the state or the federal government, and the board has been requested in writing to provide that operation and maintenance of those works or improvements by that zone, funds for that purpose may, at the discretion of the board, be raised by assessment or special tax as provided in Section 13 of this act.

CHAPTER 90

An act to amend Section 16262.5 of the Government Code, to amend Sections 12301.6, 12303.4, 14132.95, and 17600 of, to add Sections 12301.3, 12301.4, 12301.8, and 12302.25 to, and to repeal Sections 12302.7 and 17600.110 of, the Welfare and Institutions Code,

relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 12, 1999. Filed with Secretary of State July 12, 1999.]

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

SECTION 1. Section 16262.5 of the Government Code is amended to read:

16262.5. (a) Notwithstanding any other provision of law, until June 30, 2001, the reimbursement of counties meeting one of the following conditions shall not be reduced for the state share of the nonfederal costs for the administration of the In-Home Supportive Services program.

(1) County-imposed funding reductions in the 1999–2000 or 2000–01 fiscal year prevent a county from fully funding the county share of the nonfederal administrative costs of the programs identified in subdivision (a).

(2) Application for relief under Section 16262 and this section was approved in a prior fiscal year for which relief is sought pursuant to these sections and the level of county match available is at least the amount specified in the application for that same fiscal year subject to the restrictions contained in subdivision (b).

(b) Subdivision (a) shall be subject to the following restrictions:

(1) The reduction imposed upon departments within a county responsible for administering the program referred to in subdivision (a) shall be proportionate to the average reduction in county funds for administrative activities imposed on all other departments within a county, except departments funded with revenue from Section 35 of Article XIII of the California Constitution and the county departments of health services. The county board of supervisors shall certify that the reductions are imposed proportionately.

(2) If a county reduces the department responsible for administering the program referred to in subdivision (a), and makes reductions that exceed the average reduction of any other county departments, with the exception of departments funded with revenue from Section 35 of Article XIII of the California Constitution, and the county departments of health services, then the state allocation for that program shall be reduced by the same percentage.

(3) The state share of nonfederal costs for county administration allocated to a county for the administration of the programs referred to in subdivision (a) shall be limited to the 1999–2000 or 2000–01 fiscal year allocations as determined by the State Department of Social Services in compliance with current allocation formulas as adjusted pursuant to paragraph (2).

(4) No reduction in county administrative costs authorized by this section shall result in any increased cost to the state General Fund.

(5) No reduction in county administrative costs authorized by this section shall result in any decrease in county assistance payments in the program referred to in subdivision (a).

(6) The maximum rate reduction shall not exceed 15 percent of the required county match. For counties that received fiscal relief in either the 1995–96 or 1996–97 fiscal year, the county match shall be the greater of 50 percent of the required county match for the year relief is being requested, or alternatively, the county match approved in either the 1995–96 or 1996–97 fiscal year.

(c) Counties requesting relief under this section shall apply to the State Department of Social Services on or before October 31 of the fiscal year for which relief is sought pursuant to this section.

SEC. 2. Section 12301.3 is added to the Welfare and Institutions Code, to read:

12301.3. (a) Each county shall appoint an in-home supportive services advisory committee that shall be comprised of not more than 11 individuals. No less than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or as recipients of services under this article.

(b) Prior to the appointment of members to a committee required by subdivision (a), the county board of supervisors shall solicit recommendations for qualified members through a fair and open process that includes the provision of reasonable written notice to, and reasonable response time by, members of the general public and interested persons and organizations.

(c) The advisory committee shall submit recommendations to the county board of supervisors on the preferred mode or modes of service to be utilized in the county for in-home supportive services.

(d) Any county that has established a governing body, as provided in subdivision (b) of Section 12301.6 shall be deemed to be in compliance with this section.

SEC. 3. Section 12301.4 is added to the Welfare and Institutions Code, to read:

12301.4. Each advisory committee established pursuant to Section 12301.3 or 12301.6 shall provide ongoing advice and recommendations regarding in-home supportive services to the county board of supervisors, any administrative body in the county that is related to the delivery and administration of in-home supportive services, and the governing body and administrative agency of the public authority, nonprofit consortium, contractor, and public employees.

SEC. 4. Section 12301.6 of the Welfare and Institutions Code is amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable, written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

(4) If the enabling ordinance does not designate the board of supervisors as the governing body of the public authority, the

enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (d) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (d) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(3) (A) The annual cost for any public authority or nonprofit consortium created pursuant to this section shall be shared by the state and the counties as prescribed in Section 12306.

(B) No increase in wages or benefits negotiated or agreed to pursuant to this section shall take effect unless and until, prior to its implementation, the department has obtained the approval of the State Department of Health Services for the increase pursuant to a determination that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) Investigation of the qualifications and background of potential personnel.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.

(5) Performing any other functions related to the delivery of in-home supportive services.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(g) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services. Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(*l*) (1) The department may adopt regulations implementing 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 Procedures Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11364.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these regulations shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department.

(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision (c) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (g) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Paragraph (1) shall become inoperative when the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.

(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further ensure the well-being of recipients and the most efficient delivery of required services.

(o) Commencing July 1, 1997, the department shall provide annual reports to the appropriate fiscal and policy committees of the Legislature on the efficacy of the implementation of this section, and shall include an assessment of the quality of care provided pursuant to this section.

SEC. 5. Section 12301.8 is added to the Welfare and Institutions Code, to read:

12301.8. (a) Increases in provider wages and benefits for the provision of services pursuant to Section 12301.6 or 12302.1 may be made in a manner appropriate to the entities or contracts described in those sections. For the 1999–2000 fiscal year, and for each fiscal year thereafter, any county that expends county funds in an amount at least equal to the reduction during the fiscal year in the county's share of cost that results from federal financial participation in services provided to medically needy aged, blind, and disabled persons after the implementation of the state plan amendment pursuant to subdivision (p) of Section 14132.95 shall be reimbursed for the cost of the increase in wages and benefits that exceeds the reduction in the county share of cost and is necessary to meet the established rates. This provision does not apply to any wage increase necessary to meet federal or state minimum wage requirements. For the 1999–2000 fiscal year, the reduction in the county's share of cost during the fiscal year shall also include any reduction that occurred in the 1998–99 fiscal year due to the implementation of the state plan amendments pursuant to subdivision (p) of Section 14132.95, unless

the county has used the savings during the 1998–99 fiscal year to pay for provider wages and benefit increases. This subdivision applies solely to public authority, nonprofit consortium, and contract employees who provide services pursuant to Sections 12301.6 and 12302.1.

(b) The department shall reimburse counties for the cost of increased wages and benefits that exceed the amount of the reduction in the county's share of cost as determined pursuant to subdivision (a), provided that amount is not greater than the county's actual cost.

(c) Except as specifically set forth in subdivision (a), this section is not otherwise intended to alter the cost sharing described in Sections 12301.6 and 12306.

SEC. 6. Section 12302.25 is added to the Welfare and Institutions Code, to read:

12302.25. (a) On or before January 1, 2003, each county shall act as, or establish, an employer for in-home supportive service providers under Section 12302.2 for the purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and other applicable state or federal laws. Each county may utilize a public authority or nonprofit consortium as authorized under Section 12301.6, the contract mode as authorized under Sections 12302 and 12302.1, county administration of the individual provider mode as authorized under Sections 12302 and 12302.2 for purposes of acting as, or providing, an employer under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code, county civil service personnel as authorized under Section 12302, or mixed modes of service authorized pursuant to this article and may establish regional agreements in establishing an employer for purposes of this subdivision for providers of in-home supportive services. Within 30 days of the effective date of this section, the department shall develop a timetable for implementation of this subdivision to ensure orderly compliance by counties. Recipients of in-home supportive services shall retain the right to choose the individuals that provide their care and to recruit, select, train, reject, or change any provider under the contract mode or to hire, fire, train, and supervise any provider under any other mode of service. Upon request of a recipient, and in addition to a county's selected method of establishing an employer for in-home supportive service providers pursuant to this subdivision, counties with an IHSS caseload of more than 500 shall be required to offer an individual provider employer option.

(b) Nothing in this section shall prohibit any negotiations or agreement regarding collective bargaining or any wage and benefit enhancements.

(c) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other

provisions of Section 12302.2 for providers of in-home supportive services.

(d) Prior to implementing subdivision (a), a county shall establish an advisory committee as required by Section 12301.3 and solicit recommendations from the advisory committee on the preferred mode or modes of service to be utilized in the county for in-home supportive services.

(e) Each county shall take into account the advice and recommendations of the in-home supportive services advisory committee, as established pursuant to Section 12301.3, prior to making policy and funding decisions about the program on an ongoing basis.

(f) In implementing and administering this section, no county, public authority, nonprofit consortium, contractor, or a combination thereof, that delivers in-home supportive services shall reduce the hours of service for any recipient below the amount determined to be necessary under the uniform assessment guidelines established by the department.

(g) Any agreement between a county and an entity acting as an employer under subdivision (a) shall include a provision that requires that funds appropriated by the state for wage increases for in-home supportive services providers be used exclusively for that purpose. Counties or the state may undertake audits of the entities acting as employers under the terms of subdivision (a) to verify compliance with this subdivision.

SEC. 7. Section 12302.7 of the Welfare and Institutions Code is repealed.

SEC. 8. Section 12303.4 of the Welfare and Institutions Code is amended to read:

12303.4. (a) Any aged, blind, or disabled individual who is eligible for assistance under this chapter or Chapter 4 (commencing with Section 12500), and who is not described in Section 12304, shall receive services under this article which do not exceed the maximum of 195 hours per month.

(b) Any aged, blind, or disabled individual who is eligible for assistance under this chapter or Chapter 4 (commencing with Section 12500), who is in need, as determined by the county welfare department, of at least 20 hours per week of the services defined in Section 12304, shall be eligible to receive services under this article, the total of which shall not exceed a maximum of 283 hours per month.

SEC. 9. Section 14132.95 of the Welfare and Institutions Code is amended to read:

14132.95. (a) Personal care services, when provided to a categorically needy person as defined in Section 14050.1 is a covered benefit to the extent federal financial participation is available if these services are:

(1) Provided in the beneficiary's home and other locations as may be authorized by the director subject to federal approval.

(2) Authorized by county social services staff in accordance with a plan of treatment.

(3) Provided by a qualified person.

(4) Provided to a beneficiary who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services described in this section.

(b) The department shall seek federal approval of a state plan amendment necessary to include personal care as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations. For any persons who meet the criteria specified in subdivision (a) or (p), but for whom federal financial participation is not available, eligibility shall be available pursuant to Article 7 (commencing with Section 12300) of Chapter 3, if otherwise eligible.

(c) Subdivision (a) shall not be implemented unless the department has obtained federal approval of the state plan amendment described in subdivision (b), and the Department of Finance has determined, and has informed the department in writing, that the implementation of this section will not result in additional costs to the state relative to state appropriation for in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3, in the 1992–93 fiscal year.

(d) (1) For purposes of this section, personal care services shall mean all of the following:

(A) Assistance with ambulation.

(B) Bathing, oral hygiene and grooming.

(C) Dressing.

(D) Care and assistance with prosthetic devices.

(E) Bowel, bladder, and menstrual care.

(F) Skin care.

(G) Repositioning, range of motion exercises, and transfers.

(H) Feeding and assurance of adequate fluid intake.

(I) Respiration.

(J) Paramedical services.

(K) Assistance with self-administration of medications.

(2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.

(e) (1) (A) After consulting with the State Department of Social Services, the department shall adopt emergency regulations to establish the amount, scope, and duration of personal care services available to persons described in subdivision (a) in the fiscal year

whenever the department determines that General Fund expenditures for personal care services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, are expected to exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute. At least 30 days prior to filing these regulations with the Secretary of State, the department shall give notice of the expected content of these regulations to the fiscal committees of both houses of the Legislature.

(B) In establishing the amount, scope, and duration of personal care services, the department shall ensure that General Fund expenditures for personal care services provided for under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, do not exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute.

(C) For purposes of this subdivision, "caseload growth" means an adjustment factor determined by the department based on (1) growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability, (2) the average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1988–89 to 1992–93 fiscal years, inclusive, due to the level of impairment, and (3) any increase in program costs that is required by an increase in the mandatory minimum wage.

(2) In establishing the amount, scope, and duration of personal care services pursuant to this subdivision, the department may define and take into account, among other things:

(A) The extent to which the particular personal care services are essential or nonessential.

(B) Standards establishing the medical necessity of the services to be provided.

(C) Utilization controls.

(D) A minimum number of hours of personal care services that must first be assessed as needed as a condition of receiving personal care services pursuant to this section.

The level of personal care services shall be established so as to avoid, to the extent feasible within budgetary constraints, medical out-of-home placements.

(3) To the extent that General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1992–93 fiscal year, adjusted for caseload growth, exceed General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in any fiscal year, the excess of these funds shall be expended for any purpose as directed in the Budget Act or as otherwise statutorily disbursed by the Legislature.

(f) Services pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of Chapter 3, for the In-Home Supportive Services program. A provider of personal care services shall be qualified to provide the service and shall be a person other than a member of the family. For purposes of this section, a family member means a parent of a minor child or a spouse.

(g) A beneficiary who is eligible for assistance under this section shall receive services that do not exceed 283 hours per month of personal care services.

(h) Personal care services shall not be provided to residents of facilities licensed by the department, and shall not be provided to residents of a community care facility or a residential care facility for the elderly licensed by the Community Care Licensing Division of the State Department of Social Services.

(i) Subject to any limitations that may be imposed pursuant to subdivision (e), determination of need and authorization for services shall be performed in accordance with Article 7 (commencing with Section 12300) of Chapter 3.

(j) (1) To the extent permitted by federal law, reimbursement rates for personal care services shall be equal to the rates in each county for the same mode of services in the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3, plus any increase provided in the annual Budget Act for personal care services rates or included in a county budget pursuant to paragraph (2).

(2) (A) The department shall establish a provider reimbursement rate methodology to determine payment rates for the individual provider mode of service that does all of the following:

(i) Is consistent with the functions and duties of entities created pursuant to Section 12301.6.

(ii) Makes any additional expenditure of state general funds subject to appropriation in the annual Budget Act.

(iii) Permits county-only funds to draw down federal financial participation consistent with federal law.

(B) This ratesetting method shall be in effect in time for any rate increases to be included in the annual Budget Act.

(C) The department may, in establishing the ratesetting method required by subparagraph (A), do both of the following:

(i) Deem the market rate for like work in each county, as determined by the Employment Development Department, to be the cap for increases in payment rates for individual practitioner services.

(ii) Provide for consideration of county input concerning the rate necessary to ensure access to services in that county.

(D) If an increase in individual practitioner rates is included in the annual Budget Act, the state-county sharing ratio shall be as established in Section 12306. If the annual Budget Act does not include an increase in individual practitioner rates, a county may use county-only funds to meet federal financial participation requirements consistent with federal law.

(3) (A) By November 1, 1993, the department shall submit a state plan amendment to the federal Health Care Financing Administration to implement this subdivision. To the extent that any element or requirement of this subdivision is not approved, the department shall submit a request to the federal Health Care Financing Administration for any waivers as would be necessary to implement this subdivision.

(B) The provider reimbursement ratesetting methodology authorized by the amendments to this subdivision in the 1993–94 Regular Session of the Legislature shall not be operative until all necessary federal approvals have been obtained.

(k) (1) The State Department of Social Services shall, by September 1, 1993, notify the following persons that they are eligible to participate in the personal care services program:

(A) Persons eligible for services pursuant to the Pickle Amendment, as adopted October 28, 1976.

(B) Persons eligible for services pursuant to subsection (c) of Section 1383c of Title 42 of the United States Code.

(2) The State Department of Social Services shall, by September 1, 1993, notify persons to whom paragraph (1) applies and who receive advance payment for in-home supportive services that they will qualify for services under this section without a share of cost if they elect to accept payment for services on an arrears rather than an advance payment basis.

(*l*) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 shall be given the option of hiring his or her own provider.

(m) The county welfare department shall inform in writing any individual who is potentially eligible for services under this section of his or her right to the services.

(n) It is the intent of the Legislature that this entire section be an inseparable whole and that no part of it be severable. If any portion of this section is found to be invalid, as determined by a final judgment of a court of competent jurisdiction, this section shall become inoperative.

(o) Paragraphs (2) and (3) of subdivision (a) shall be implemented so as to conform to federal law authorizing their implementation.

(p) (1) Personal care services shall be provided as a covered benefit to a medically needy aged, blind, or disabled person, as defined in subdivision (a) of Section 14051, to the same extent and under the same requirements as they are provided under subdivision (a) of this section to a categorically needy, aged, blind, or disabled person, as defined in subdivision (a) of Section 14050.1, and to the extent that federal financial participation is available.

(2) The department shall seek federal approval of a state plan amendment necessary to include personal care services described in paragraph (1) as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations.

(3) In the event that the Department of Finance determines that expenditures of both General Fund moneys for personal care services provided under this subdivision to medically needy aged, blind, or disabled persons together with expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for all aged, blind, and disabled persons receiving in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, in the 2000–01 fiscal year or in any subsequent fiscal year, are expected to exceed the General Fund appropriation and the federal appropriation received under Title XX of the federal Social Security Act for expenditures for all aged, blind, and disabled persons receiving in-home supportive services provided in the 1999–2000 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1998, as adjusted for caseload growth or as changed in the Budget Act or by statute or regulation, then this subdivision shall cease to be operative on the first day of the month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of the Department of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(4) Solely for purposes of paragraph (3), caseload growth means an adjustment factor determined by the department based on:

(A) Growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability.

(B) The average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1994–95 to 1998–99 fiscal years, inclusive, due to the level of impairment.

(C) Any increase in program cost that is required by an increase in hourly costs pursuant to the Budget Act or statute.

(5) In the event of a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Health Care Financing Administration that personal care services must be provided to any medically needy person who is not aged, blind, or disabled, then this subdivision shall cease to be operative on the first day of the first month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(6) If this subdivision ceases to be operative, all aged, blind, and disabled persons who would have received or been eligible to receive in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, but for receiving services under this subdivision, shall be eligible immediately upon this section becoming inoperative for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3.

(7) The department shall implement this subdivision on April 1, 1999, but only if the department has obtained federal approval of the state plan amendments described in paragraph (2) of this subdivision.

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

SEC. 10. Section 17600 of the Welfare and Institutions Code is amended to read:

17600. (a) There is hereby created the Local Revenue Fund, which shall have all of the following accounts:

(1) The Sales Tax Account.

(2) The Vehicle License Fee Account.

(3) The Vehicle License Collection Account.

(4) The Sales Tax Growth Account.

(5) The Vehicle License Fee Growth Account.

(b) The Sales Tax Account shall have all of the following subaccounts:

(1) The Mental Health Subaccount.

(2) The Social Services Subaccount.
(3) The Health Subaccount.
(c) The Sales Tax Growth Account shall have all of the following subaccounts:
(1) The Caseload Subaccount.
(2) The Base Restoration Subaccount.
(3) The Indigent Health Equity Subaccount.
(4) The Community Health Equity Subaccount.
(5) The Mental Health Equity Subaccount.
(6) The State Hospital Mental Health Equity Subaccount.
(7) The County Medical Services Subaccount.
(8) The General Growth Subaccount.
(9) The Special Equity Subaccount.
(d) Notwithstanding Section 13340 of the Government Code, the Local Revenue Fund is hereby continuously appropriated, without regard to fiscal years, for the purpose of this chapter.
(e) The Local Revenue Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be distributed in January and July among the accounts and subaccounts in proportion to the amounts deposited into each subaccount, except as provided in subdivision (f).
(f) If a distribution required by subdivision (e) would cause a subaccount to exceed its limitations imposed pursuant to any of the following, the distribution shall be made among the remaining subaccounts in proportion to the amounts deposited into each subaccount in the six prior months:
(1) Subdivision (a) of Section 17605.
(2) Paragraph (1) of subdivision (a) of Section 17605.05.
(3) Subdivision (b) of Section 17605.10.
(4) Subdivision (c) of Section 17605.10.
SEC. 11. Section 17600.110 of the Welfare and Institutions Code is repealed.
SEC. 12. The unencumbered amount residing in the In-Home Supportive Services Registry Subaccount of the Sales Tax Account of the Local Revenue Fund on January 1, 2000, shall be transferred to the General Fund.
SEC. 13. 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.
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 make timely adjustments in the process of implementation of the State Budget for the 1999–2000 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 91

An act to add Section 12306.1 to, to repeal Section 12301.8 of, to repeal and add Section 12301.6 of, the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 12, 1999. Filed with Secretary of State July 12, 1999.]

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

SECTION 1. Section 12301.6 of the Welfare and Institutions Code, as amended by Assembly Bill 1682 of the 1999–2000 Regular Session, is repealed.

SEC. 2. Section 12301.6 is added to the Welfare and Institutions Code, to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services

pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable, written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

(4) If the enabling ordinance does not designate the board of supervisors as the governing body of the public authority, the enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (d) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (d) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(3) When any increase in provider wages or benefits is negotiated or agreed to by a public authority or nonprofit consortium under this section, then the county shall use county-only funds to fund both the

county share and the state share, including employment taxes, of any increase in the cost of the program, unless otherwise provided for in the annual Budget Act or appropriated by statute. No increase in wages or benefits negotiated or agreed to pursuant to this section shall take effect unless and until, prior to its implementation, the department has obtained the approval of the State Department of Health Services for the increase pursuant to a determination that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) Investigation of the qualifications and background of potential personnel.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.

(5) Performing any other functions related to the delivery of in-home supportive services.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(g) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services. Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(*l*) (1) The department may adopt regulations implementing 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

Procedures Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11364.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these regulations shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department.

(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision (c) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (g) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Paragraph (1) shall become inoperative when the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.

(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further ensure the well-being of recipients and the most efficient delivery of required services.

(o) Commencing July 1, 1997, the department shall provide annual reports to the appropriate fiscal and policy committees of the Legislature on the efficacy of the implementation of this section, and shall include an assessment of the quality of care provided pursuant to this section.

SEC. 3. Section 12301.8 of the Welfare and Institutions Code, as added by Assembly Bill 1682 of the 1999–2000 Regular Session, is repealed.

SEC. 4. Section 12306.1 is added to the Welfare and Institutions Code, to read:

12306.1. Notwithstanding paragraph (3) of subdivision (c) of Section 12301.6, with regard to wage increases negotiated by a public authority pursuant to Section 12301.6, for the 1999–2000 fiscal year the state shall pay 80 percent, and each county shall pay 20 percent, of the nonfederal share of paid increases up to fifty cents ($0.50) above the hourly statewide minimum wage. This section shall be applicable to wage increases negotiated prior to or during the 1999–2000 fiscal year.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make timely adjustments in the process of implementation of the Budget Act of 1999, it is necessary that this act take effect immediately.

CHAPTER 92

An act to amend Section 13385 of, and to add Sections 13263.3, 13263.6, and 13362 to, the Water Code, relating to water.

[Approved by Governor July 12, 1999. Filed with Secretary of State July 12, 1999.]

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

SECTION 1. It is the intent of the Legislature that the State Water Resources Control Board review and resolve identified problems with permitting, enforcement, and water quality monitoring activities undertaken by the state board and the regional water quality control boards for the purposes of protecting the public health and improving the quality of the environment. In particular, it is the intent of the Legislature that the state board and the regional

boards carry out the Clean Water Act (33 U.S.C. 1251 et seq.) and the Porter-Cologne Water Quality Control Act (Div. 13 (commencing with Sec. 13000), Wat. C.) by ensuring compliance with permit requirements and taking enforcement action in a timely manner when violations are found.

SEC. 2. The Legislature finds and declares all of the following:

(a) The State Water Resources Control Board and the regional water quality control boards have identified numerous water bodies throughout the state that are not meeting water quality standards.

(b) The sources of water quality impairments in California are diverse and include nonpoint sources such as agricultural, forestry, and urban dry weather and stormwater runoff, residential onsite sewage disposal systems, and boats and marinas, and point sources such as industrial discharges and municipal publicly owned treatment works (POTWs).

(c) The state board and the regional boards prescribe waste discharge requirements to regulate discharges by point sources.

(d) Recent investigations indicate that current enforcement efforts of the state board and the regional boards may not be achieving full compliance with waste discharge requirements in a timely manner, and that swift and timely enforcement of waste discharge requirements will assist in bringing the state's waters into compliance and will ensure that violators do not realize economic benefits from noncompliance.

(e) To attain water quality standards in the state's waters, additional efforts are also needed to control threats to the health of the state's waters that are posed by nonpoint sources of pollution.

SEC. 3. Section 13263.3 is added to the Water Code, to read:

13263.3. (a) The Legislature finds and declares that pollution prevention should be the first step in a hierarchy for reducing pollution and managing wastes, and to achieve environmental stewardship for society. The Legislature also finds and declares that pollution prevention is necessary to achieve the federal goal of zero discharge of pollutants into navigable waters.

(b) (1) For the purposes of this section, "pollution prevention" means any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes any 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 pollutants discharged in wastewater.

(B) "Operational improvement," which means improved site management so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(C) "Production process change," which means a change in a process, method, or technique that 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 pollutants discharged in wastewater.

(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 problem pollutants discharged in wastewater.

(2) For the purposes of this section, "pollution prevention" does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are demonstrated.

(c) (1) For the purposes of this section, "discharger" means any entity required to obtain a national pollutant discharge elimination system (NPDES) permit pursuant to the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), or any entity subject to the pretreatment program as defined in Part 403 (commencing with Section 403.1) of subchapter N of Chapter 1 of Part 403 of Title 40 of the Code of Federal Regulations.

(2) For the purposes of this section, "industrial discharger" means any discharger other than a publicly owned treatment works (POTW).

(d) (1) The state board, a regional board, or a POTW may require a discharger subject to its jurisdiction to complete a pollution prevention plan if any of the following apply:

(A) A discharger is determined to be a chronic violator and the board or the POTW determines that pollution prevention could achieve compliance.

(B) The discharger contributes, or has the potential to contribute, to the formation of a toxic hot spot as defined in Section 13391.5.

(C) The discharger discharges a pollutant for which the permitted level is lower than the practical quantification limit and the state board, a regional board, or the POTW determines that additional reductions of the pollutant are necessary.

(D) The board determines pollution prevention is necessary to achieve a water quality objective.

(2) The state board, a regional board, or a POTW may require an industrial discharger subject to its jurisdiction to complete a pollution prevention plan that includes all of the following:

(A) An analysis of the pollutants that the facility discharges into water or introduces into POTWs, a description of the sources of the pollutants, and a comprehensive review of the processes used by the discharger that result in the generation and discharge of the pollutants.

(B) An analysis of the potential for pollution prevention to reduce the generation of the pollutants, including the application of innovative and alternative technologies and any adverse environmental impacts resulting from the use of those methods.

(C) A detailed description of the tasks and time schedules required to investigate and implement various elements of pollution prevention techniques.

(D) A statement of the discharger's pollution prevention goals and strategies, including priorities for short-term and long-term action.

(E) A description of the discharger's intended pollution prevention activities for the immediate future.

(F) A description of the discharger's existing pollution prevention methods.

(G) A statement that the discharger's existing and planned pollution prevention strategies do not constitute cross-media pollution transfers, and information that supports that statement.

(H) Toxic chemical release data for those dischargers subject to Section 313 of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sec. 11023).

(I) Proof of compliance with the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9 (commencing with Section 25244.12) of Chapter 6.5 of Division 20 of the Health and Safety Code) if the discharger is also subject to that act.

(J) An analysis of the relative costs and benefits of the possible pollution prevention activities.

(3) A regional board may require a POTW to complete a pollution prevention plan that includes all of the following:

(A) An estimate of all of the sources of a pollutant contributing, or potentially contributing, to the loadings of a pollutants in the treatment plant influent.

(B) An analysis of the methods that could be used to prevent the discharge of the pollutants into the POTW, including application of local limits to industrial or commercial dischargers regarding pollution prevention techniques, public education and outreach, or other innovative and alternative approaches to reduce discharges of the pollutant to the POTW. The analysis also shall identify sources, or potential sources, not within the ability or authority of the POTW to control, such as pollutants in the potable water supply, airborne pollutants, pharmaceuticals, or pesticides, and estimate the magnitude of those sources, to the extent feasible.

(C) An estimate of load reductions that may be attained through the methods identified in subparagraph (B).

(D) A plan for monitoring the results of the pollution prevention program.

(E) A description of the tasks, cost, and time required to investigate and implement various elements in the pollution prevention plan.

(F) A statement of the POTW's pollution prevention goals and strategies, including priorities for short-term and long-term action,

and a description of the POTW's intended pollution prevention activities for the immediate future.

(G) A description of the POTW's existing pollution prevention programs.

(H) An analysis, to the extent feasible, of any adverse environmental impacts, including cross-media impacts or substitute chemicals, that may result from the implementation of the pollution prevention program.

(I) An analysis, to the extent feasible, of the costs and benefits that may be incurred to implement the pollution prevention program.

(e) The state board or the regional board may establish a schedule of actions identified in the pollution prevention plans for the discharger.

(f) The state board or regional board shall solicit comments from the public on a pollution prevention plan prepared pursuant to this section and address the public comments when determining what schedule of actions, if any, to establish for the discharger pursuant to this section.

(g) The state board and regional boards shall make the pollution prevention plans available for public review, except to the extent that information is classified as confidential because it is a trade secret. Trade secret information shall be set forth in an appendix that is not available to the public.

(h) Any costs incurred by the state board or a regional board resulting from actions required by this section shall be paid for from revenue generated by the fees imposed by Section 13260.

(i) The state board or regional board may assess civil penalties pursuant to Section 13385 against a discharger for failure to complete a pollution prevention plan ordered by the state board or a regional board, or for failure to comply with a schedule of actions ordered by the state board or a regional board pursuant to this section.

(j) A POTW may assess civil penalties and civil administrative penalties pursuant to Sections 54740, 54740.5, and 54740.6 of the Government Code against an industrial discharger for failure to complete a pollution prevention plan when ordered by the POTW, for submitting a plan that does not comply with the act, or for failure to comply with a schedule of actions ordered by the POTW pursuant to this section, unless the regional board has assessed penalties for the same action.

(k) A discharger may change its pollution prevention plan, including withdrawing from a pollution prevention measure approved by the state board, a regional board, or a POTW, if the discharger determines that the measure will have a negative impact on product quality, the safe operation of the facility, or the environmental aspects of the facilities operation, and the discharger demonstrates to the board or the POTW an alternative measure that achieves that same pollution prevention objective.

(*l*) The state board shall adopt a format to be used by dischargers for completing the plan required by this section. The format shall address all of the factors the discharger is required to include in the plan. The board may include any other factors determined by the board to be necessary to carry out this section. The adoption of the format pursuant to this section is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 13263.6 is added to the Water Code, to read:

13263.6. (a) A publicly owned treatment works (POTW) may require pollution prevention plans as described in Section 13263.3 as part of the pretreatment requirements applicable to significant industrial users.

(b) The state board or a regional board shall prescribe effluent limitations as part of the waste discharge requirements of a POTW for all substances that the most recent toxic chemical release data reported to the state emergency response commission pursuant to Section 313 of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sec. 11023) indicate are discharged into the POTW and that the state board or a regional board has determined has the reasonable potential to impair water quality.

SEC. 5. Section 13362 is added to the Water Code, to read:

13362. A publicly owned treatment works (POTW) with an approved pretreatment program may conduct inspections in accordance with the provisions of Sections 403.8(f)(1)(v) and 403.8(f)(2)(v) of Title 40 of the Code of Federal Regulations and assess and collect civil penalties and civil administrative penalties in accordance with Sections 54740, 54740.5, and 54740.6 of the Government Code, with regard to all dischargers of industrial waste to the POTW.

SEC. 6. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged and fill material permit.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, as amended.

(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars ($25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) For purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for the first serious violation in any 180-day period, except that in lieu of assessing that penalty the state board or the regional

board may elect to require the discharger to spend an amount equal to the penalty to mitigate the subject waste discharge, or to develop a pollution prevention plan.

(2) For the purpose of this section, a serious violation means any waste discharge that exceeds the effluent limitations for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i) Notwithstanding any other provision of this division, a minimum mandatory penalty of three thousand dollars ($3,000) shall be assessed for each violation if either of the following applies:

(1) The person commits two or more serious violations in any 180-day period.

(2) The person does any of the following four or more times in any 180-day period:

(A) Exceeds a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(j) Mandatory penalties shall not be assessed under this section if the violations are caused by one or any combination of the following:

(1) An act of war.

(2) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(k) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any penalty imposed under this section shall be required to pay, in addition to that penalty, interest, attorneys' fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(*l*) Funds collected pursuant to this subdivision shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(m) (1) Notwithstanding Section 7550.5 of the Government Code, the state board shall report annually to the Legislature regarding its enforcement activities. The reports shall include all of the following:

(A) A compilation of the number of violations of waste discharge requirements in the previous year.

(B) A record of the enforcement actions taken for each violation.

(C) An analysis of the effectiveness of current enforcement policies.

(D) Recommendations, if any, necessary for improvements to the enforcement program in the following year.

(2) The report shall be submitted to the Chairperson of the Assembly Committee on Environmental Safety and Toxic Materials and the Chairperson of the Senate Committee on Environmental Quality on or before March 1 of each year.

(n) Negligence on the part of the state, the United States, or any department or agency thereof, shall not be a defense to liability imposed pursuant to this section for any discharge caused by the discharger's own negligence.

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.

CHAPTER 93

An act to amend Section 13385 of, and to add Sections 13263.3, 13263.6, and 13362 to, the Water Code, relating to water.

[Approved by Governor July 12, 1999. Filed with Secretary of State July 12, 1999.]

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

SECTION 1. This act shall be known as the Clean Water Enforcement and Pollution Prevention Act of 1999.

SEC. 2. The Legislature finds and declares all of the following:

(a) The State Water Resources Control Board and the regional water quality control boards have identified numerous water bodies throughout the state that are not meeting water quality standards.

(b) The sources of water quality impairments in California are diverse and include nonpoint sources such as agricultural, forestry, and urban dry weather and storm water runoff, residential onsite sewage disposal systems, and boats and marinas, and point sources such as industrial discharges and municipal publicly owned treatment works (POTWs).

(c) The state board and the regional boards prescribe waste discharge requirements to regulate discharges by point sources.

(d) Recent investigations indicate that current enforcement efforts of the state board and the regional boards may not be

achieving full compliance with waste discharge requirements in a timely manner, and that swift and timely enforcement of waste discharge requirements will assist in bringing the state's waters into compliance and will ensure that violators do not realize economic benefits from noncompliance.

(e) To attain water quality standards in the state's waters, additional efforts are also needed to control threats to the health of the state's waters that are posed by nonpoint sources of pollution.

SEC. 3. Section 13263.3 is added to the Water Code, to read:

13263.3. (a) The Legislature finds and declares that pollution prevention should be the first step in a hierarchy for reducing pollution and managing wastes, and to achieve environmental stewardship for society. The Legislature also finds and declares that pollution prevention is necessary to support the federal goal of zero discharge of pollutants into navigable waters.

(b) (1) For the purposes of this section, "pollution prevention" means any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes any 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 pollutants discharged in wastewater.

(B) "Operational improvement," which means improved site management so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(C) "Production process change," which means a change in a process, method, or technique that 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 pollutants discharged in wastewater.

(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 problem pollutants discharged in wastewater.

(2) For the purposes of this section, "pollution prevention" does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the state board, the regional board, or POTW.

(c) For the purposes of this section, "discharger" means any entity required to obtain a national pollutant discharge elimination system (NPDES) permit pursuant to the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), or any entity subject to the pretreatment program as defined in Part 403 (commencing with Section 403.1) of Subchapter

N of Chapter 1 of Part 403 of Title 40 of the Code of Federal Regulations.

(d) (1) The state board, a regional board, or a POTW may require a discharger subject to its jurisdiction to complete and implement a pollution prevention plan if any of the following apply:

(A) A discharger is determined by the state board to be a chronic violator, and the state board, a regional board, or the POTW determines that pollution prevention could assist in achieving compliance.

(B) The discharger significantly contributes, or has the potential to significantly contribute, to the creation of a toxic hot spot as defined in Section 13391.5.

(C) The state board, a regional board, or a POTW determines pollution prevention is necessary to achieve a water quality objective.

(2) A pollution prevention plan required of a discharger other than a POTW pursuant to paragraph (1) shall include all of the following:

(A) An analysis of one or more of the pollutants, as directed by the state board, a regional board, or a POTW, that the facility discharges into water or introduces into POTWs, a description of the sources of the pollutants, and a comprehensive review of the processes used by the discharger that result in the generation and discharge of the pollutants.

(B) An analysis of the potential for pollution prevention to reduce the generation of the pollutants, including the application of innovative and alternative technologies and any adverse environmental impacts resulting from the use of those methods.

(C) A detailed description of the tasks and time schedules required to investigate and implement various elements of pollution prevention techniques.

(D) A statement of the discharger's pollution prevention goals and strategies, including priorities for short-term and long-term action.

(E) A description of the discharger's existing pollution prevention methods.

(F) A statement that the discharger's existing and planned pollution prevention strategies do not constitute cross media pollution transfers unless clear environmental benefits of such an approach are identified to the satisfaction of the state board, the regional board, or the POTW, and information that supports that statement.

(G) Proof of compliance with the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9 (commencing with Section 25244.12) of Chapter 6.5 of Division 20 of the Health and Safety Code) if the discharger is also subject to that act.

(H) An analysis, to the extent feasible, of the relative costs and benefits of the possible pollution prevention activities.

(I) A specification of, and rationale for, the technically feasible and economically practicable pollution prevention measures selected by the discharger for implementation.

(3) The state board or a regional board may require a POTW to complete and implement a pollution prevention plan that includes all of the following:

(A) An estimate of all of the sources of a pollutant contributing, or potentially contributing, to the loading of that pollutant in the treatment plant influent.

(B) An analysis of the methods that could be used to prevent the discharge of the pollutants into the POTW, including application of local limits to industrial or commercial dischargers regarding pollution prevention techniques, public education and outreach, or other innovative and alternative approaches to reduce discharges of the pollutant to the POTW. The analysis also shall identify sources, or potential sources, not within the ability or authority of the POTW to control, such as pollutants in the potable water supply, airborne pollutants, pharmaceuticals, or pesticides, and estimate the magnitude of those sources, to the extent feasible.

(C) An estimate of load reductions that may be attained through the methods identified in subparagraph (B).

(D) A plan for monitoring the results of the pollution prevention program.

(E) A description of the tasks, cost, and time required to investigate and implement various elements in the pollution prevention plan.

(F) A statement of the POTW's pollution prevention goals and strategies, including priorities for short-term and long-term action, and a description of the POTW's intended pollution prevention activities for the immediate future.

(G) A description of the POTW's existing pollution prevention programs.

(H) An analysis, to the extent feasible, of any adverse environmental impacts, including cross media impacts or substitute chemicals, that may result from the implementation of the pollution prevention program.

(I) An analysis, to the extent feasible, of the costs and benefits that may be incurred to implement the pollution prevention program.

(e) The state board, a regional board, or a POTW may require a discharger subject to this section to comply with the pollution prevention plan developed by the discharger after providing an opportunity for comment at a public proceeding with regard to that plan.

(f) The state board, regional boards, and POTWs shall make the pollution prevention plans available for public review, except to the extent that information is classified as confidential because it is a

trade secret. Trade secret information shall be set forth in an appendix that is not available to the public.

(g) The state board or regional board may assess civil penalties pursuant to Section 13385 against a discharger for failure to complete a pollution prevention plan required by the state board or a regional board, for submitting a plan that does not comply with the act, or for not implementing a plan, unless the POTW has assessed penalties for the same action.

(h) A POTW may assess civil penalties and civil administrative penalties pursuant to Sections 54740, 54740.5, and 54740.6 of the Government Code against a discharger for failure to complete a pollution prevention plan when required by the POTW, for submitting a plan that does not comply with the act, or for not implementing a plan, unless the state board or a regional board has assessed penalties for the same action.

(i) A discharger may change its pollution prevention plan, including withdrawing from a pollution prevention measure required by the state board, a regional board, or a POTW, if the discharger determines that the measure will have a negative impact on product quality, the safe operation of the facility, or the environmental aspects of the facility's operation, or the discharger determines that the measure is economically impracticable or technologically infeasible. Where practicable and feasible, the discharger shall replace the withdrawn measure with a measure that will likely achieve similar pollution prevention objectives. A measure may be withdrawn pursuant to this subdivision only with the approval of the executive officer of the state board or the regional board, or the POTW.

(j) The state board shall adopt a sample format to be used by dischargers for completing the plan required by this section. The sample format shall address all of the factors the discharger is required to include in the plan. The board may include any other factors determined by the board to be necessary to carry out this section. The adoption of the sample format pursuant to this section is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The state board, a regional board, or POTW may not include a pollution prevention plan in any waste discharge requirements or other permit issued by that agency.

(*l*) This section prevails over Section 13263.3, as added to the Water Code by Assembly Bill 1104 of the 1999–2000 Regular Session.

SEC. 4. Section 13263.6 is added to the Water Code, to read:

13263.6. (a) The regional board shall prescribe effluent limitations as part of the waste discharge requirements of a POTW for all substances that the most recent toxic chemical release data reported to the state emergency response commission pursuant to Section 313 of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sec. 11023) indicate as discharged into

the POTW, for which the state board or the regional board has established numeric water quality objectives, and has determined that the discharge is or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to, an excursion above any numeric water quality objective.

(b) This section prevails over Section 13263.6, as added to the Water Code by Assembly Bill 1104 of the 1999–2000 Regular Session.

SEC. 5. Section 13362 is added to the Water Code, to read:

13362. (a) A publicly owned treatment works (POTW) with an approved pretreatment program may conduct inspections in accordance with the provisions of Sections 403.8(f)(1)(v) and 403.8(f)(2)(v) of Title 40 of the Code of Federal Regulations and assess and collect civil penalties and civil administrative penalties in accordance with Sections 54740, 54740.5, and 54740.6 of the Government Code, with regard to all dischargers of industrial waste to the POTW.

(b) This section prevails over Section 13362, as added to the Water Code by Assembly Bill 1104 of the 1999–2000 Regular Session.

SEC. 6. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged and fill material permit.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, as amended.

(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars ($25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) For purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for the first serious violation in any six-month period, except that in lieu of assessing that penalty the state board or the regional board may elect to require the discharger to spend an amount equal to the penalty for a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document, or to develop a pollution prevention plan.

(2) For the purpose of this section, a serious violation means any waste discharge that exceeds the effluent limitations for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(3) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under Section 13385.

(i) Notwithstanding any other provision of this division, a minimum mandatory penalty of three thousand dollars ($3,000) shall be assessed for each violation, not counting the first violation described in paragraph (1) of subdivision (h) for the purposes of paragraph (1) of this subdivision and not counting the first three violations described in paragraph (2), if either of the following applies:

(1) The person commits two or more serious violations in any six-month period.

(2) The person does any of the following four or more times in any six-month period:

(A) Exceeds a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(j) Mandatory penalties shall not be assessed under this section if the violations are caused by one or any combination of the following:

(1) An act of war.

(2) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(k) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any penalty imposed under this section shall be required to pay, in addition to that penalty, interest, attorneys' fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(*l*) Funds collected pursuant to this subdivision shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(m) (1) Notwithstanding Section 7550.5 of the Government Code, the state board shall report annually to the Legislature regarding its enforcement activities. The reports shall include all of the following:

(A) A compilation of the number of violations of waste discharge requirements in the previous year.

(B) A record of the formal and informal compliance and enforcement actions taken for each violation.

(C) An analysis of the effectiveness of current enforcement policies, including minimum mandatory penalties.

(D) Recommendations, if any, necessary for improvements to the enforcement program in the following year.

(2) The report shall be submitted to the Chairperson of the Assembly Committee on Environmental Safety and Toxic Materials and the Chairperson of the Senate Committee on Environmental Quality on or before March 1, 2001, and annually thereafter.

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.

CHAPTER 94

An act relating to property taxation, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. (a) California's property owners pay over $20 billion each year in property taxes, making the property tax the third largest nonfederal tax in the state.

(b) While most California cities, counties, special districts, redevelopment agencies, and schools are highly reliant upon property taxes, the state's system for allocating these revenues to local governments is seriously flawed.

(c) Specifically, California's system for allocating property taxes does not reflect (1) modern needs and preferences of local communities, or (2) the relative need for funding by cities, counties, special districts, redevelopment agencies, and schools to carry out their mandated and discretionary services.

(d) In addition, the current system centralizes control over property tax allocation in Sacramento and gives the state full authority to reallocate property taxes to offset state education funding obligations.

(e) The Legislature wishes to revamp the current system of property tax allocation to do the following:

(1) Increase taxpayer knowledge of the allocation of property taxes.

(2) Provide greater local control over property tax allocation.

(3) Give cities and counties greater fiscal incentives to approve land developments other than retail developments.

(f) To assist the Legislature in this effort, the Legislative Analyst shall prepare a report, by December 31, 1999, presenting at least two alternatives for restructuring the property tax allocation system in a manner consistent with these goals. In developing these alternatives, the Legislative Analyst shall consider the option of establishing a minimum percentage of the property tax to be allocated to each California county.

(g) The Legislature recognizes that any effort to restructure the allocation of property taxes would result in some local governments gaining property taxes and some local governments losing property tax revenues. In order to minimize the local fiscal impact of these changes, the Legislature intends to consider allocating an unspecified amount in additional revenues available to cities, counties, and special districts.

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 obtain needed information to correct inequities in the property tax formula at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 95

An act to amend Section 16302.1 of, to add Sections 13940, 13941, 13942, 13943, 13943.1, and 13943.2 to, and to repeal Sections 16301.6, 16301.7, and 16301.8 of, the Government Code, relating to state finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 13940 is added to the Government Code, to read:

13940. Any state agency or employee required to collect any state taxes, licenses, fees, or money owing to the state for any reason that is due and payable may be discharged by the board from

accountability for the collection of the taxes, licenses, fees, or money if the debt is uncollectible or the amount of the debt does not justify the cost of its collection.

SEC. 2. Section 13941 is added to the Government Code, to read:

13941. The application for a discharge under this chapter shall be filed with the Controller and include the following:

(a) A statement of the nature and amount of the tax, license, fee, or other money due.

(b) The names of the persons liable.

(c) The estimated cost of collection.

(d) All other facts warranting the discharge, unless the Controller determines that the circumstances do not warrant the furnishing of detailed information.

SEC. 3. Section 13942 is added to the Government Code, to read:

13942. The Controller shall audit the applications and recommend to the board an order discharging the applicant from further accountability for collection and authorizing the applicant to close its book on that item, if the Controller determines the following:

(a) The matters contained in the application are correct.

(b) No credit exists against which the debt can be offset.

(c) Collection is improbable for any reason.

(d) The cost of recovery does not justify the collection.

(e) For items that exceed the monetary jurisdiction of the small claims court, the Attorney General has advised, in writing, that collection is not justified by the cost or is improbable for any reason.

SEC. 4. Section 13943 is added to the Government Code, to read:

13943. The board may delegate to the Controller, under terms and conditions that are acceptable to the board, the authority to discharge from accountability a state agency for accounts that do not exceed the amount specified in subdivision (e) of Section 13942 and thereby authorize the closing of the agency's books in regard to that item.

SEC. 5. Section 13943.1 is added to the Government Code, to read:

13943.1. A discharge granted pursuant to this chapter to a state agency or employee does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the state.

SEC. 6. Section 13943.2 is added to the Government Code, to read:

13943.2. Upon authorization of the board, a state agency is not required to collect taxes, licenses, fees, or money owing to the state for any reason if the amount to be collected is two hundred fifty dollars ($250) or less. A state agency that seeks this authorization shall file an application with the board accompanied by a statement of circumstances. Nothing contained in this section shall be construed as releasing any person from the payment of any money due the state.

SEC. 7. Section 16301.6 of the Government Code is repealed.

SEC. 8. Section 16301.7 of the Government Code is repealed.

SEC. 9. Section 16301.8 of the Government Code is repealed.

SEC. 10. Section 16302.1 of the Government Code is amended to read:

16302.1. Whenever any person pays to any state agency pursuant to law an amount covering taxes, penalties, interest, license or other fees, or any other payment, and it is subsequently determined by the state agency responsible for the collection thereof that this amount includes an overpayment of ten dollars ($10) or less of the amount due the state pursuant to the assessment, levy, or charge to which the payment is applicable, the amount of the overpayment may be disposed of in either of the following ways:

(a) The state agency responsible for the collection to which the overpayment relates may apply the amount of the overpayment as a payment by the person on any other taxes, penalties, interest, license or other fees, or any other amount due the state from that person if the state agency is responsible by law for the collection to which the overpayment is to be applied as a payment.

(b) Upon written request of the state agency responsible for the collection to which the overpayment relates, the amount of the overpayment shall, on order of the Controller, be deposited as revenue in the fund in the State Treasury into which the collection, exclusive of overpayments, is required by law to be deposited.

The State Board of Control may adopt rules and regulations to permit state agencies to retain these overpayments where a demand for refund permitted by law is not made within six months after the refund becomes due, and the retained overpayments shall belong to the state.

Except as provided in the foregoing paragraph, this section shall not affect the right of any person making overpayment of any amount to the state to make a claim for refund of the overpayment, nor the authority of any state agency or official to make payment of any amount so claimed, if otherwise authorized by law.

SEC. 11. For each of the fiscal years 1999–2000 to 2008–09, inclusive, the Controller shall transfer to the General Fund, from Fund No. 0348 listed in Schedule (d) of Item 0110-001-0001 of Section 2.00 of the annual Budget Act, an amount equal to 10 percent of the total amount that, pursuant to a Department of Finance loan repayment letter of March 19, 1999, was loaned in augmentation of that item for the purpose of funding contributions pursuant to Section 20822 or former Section 20751 of the Government Code. Notwithstanding any other provision of law, the transfers made pursuant to this section are hereby deemed to fully satisfy all obligations to make repayment of that loan. The loan may be fully repaid and satisfied by an accelerated payment schedule, as agreed to by the parties, at any time prior to the 2008–09 fiscal year, after which the Controller shall not make any further transfers pursuant to this section.

SEC. 12. 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 efficient operation of state financial affairs and to enable the Public Employees' Retirement System to operate on an actuarially sound basis, it is necessary that this act take effect immediately.

CHAPTER 96

An act to amend Article 6.1 (commencing with Section 105) of the Lake Cuyamaca Recreation and Park District Act (added by Chapter 1982 of the Statutes of 1963), to add Section 76.5 to Chapter 1654 of the Statutes of 1961, and to add Section 5782.5.1 to the Public Resources Code, relating to recreation and park districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 5782.5.1 is added to the Public Resources Code, to read:

5782.5.1. The District Board of the Valley-Wide Recreation and Park District and the District Board of the Coachella Valley Recreation and Park District may each maintain a local checking account or savings account, or both a checking account and savings account, upon approval of the Board of Supervisors of Riverside County, and may transfer funds to those accounts for distribution and payment of their respective ongoing operational expenses, salaries, and debt obligations, from accounts that the board of supervisors may establish in the Riverside County Treasury for those districts for those purposes.

SEC. 2. Section 76.5 is added to Chapter 1654 of the Statutes of 1961, to read:

76.5. The district may levy and collect a special tax pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) for any of the purposes authorized by that act.

SEC. 3. Article 6.1 (commencing with Section 105) of the Lake Cuyamaca Recreation and Park District Act (added by Chapter 1982, Statutes of 1963) is amended to read:

Article 6.1. Long-term Leases

Sec. 105. If the district board determines, by a four-fifths vote of its entire membership, that it is necessary to enter into a long-term lease agreement for services or property of any kind, including water, from another public agency, or from any person, firm or corporation to provide adequate recreational facilities and services within the district, the district board may enter into such a lease agreement for a term not exceeding 40 years.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the unique circumstances concerning the Lake Cuyamaca, the Valley-Wide, and the Coachella Valley Recreation and Park Districts.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Lake Cuyamaca Recreation and Park District may execute a long-term lease with the Helix Water District at the earliest possible time, and to enable the District Board of the Valley-Wide Recreation and Park District and the District Board of the Coachella Valley Recreation and Park District to pay ongoing operational expenses, salaries, and debt obligations, thereby enabling those districts to continue providing recreational services to the public, it is necessary that this act take effect immediately.

CHAPTER 97

An act to amend Section 8 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to county water authorities.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 8 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 8. (a) An authority may incur indebtedness by contract other than by voting bonds or expenditure of bond proceeds up to a total amount equal to one-tenth of 1 percent of the assessed value, as defined in Section 135 of the Revenue and Taxation Code, or as otherwise hereafter defined by an act of the Legislature, of property taxable for authority purposes by a vote of three-fourths or more of the aggregate number of votes of all members of the board of

directors. Any proposal to incur an indebtedness in excess of that amount by contract other than by voting bonds or expenditure of bond proceeds, and any proposal to purchase, lease, or otherwise acquire rights, privileges, or services by contract, the compensation for which shall be payable over a period exceeding 40 years, shall be submitted to the qualified electors of the authority for their approval and shall be voted upon at an election where the proceedings are held, insofar as applicable, in the manner provided in this act for the authorization and issuance of the bonds of the authority, except that the vote of a majority of the electors voting upon the proposition shall be sufficient to authorize the incurring of the indebtedness. Notice of the election shall contain, in addition to the information required in the case of bond elections, a statement of the maximum amount of money to be paid under the contract, exclusive of penalties and interest, for what purposes the money is to be expended, and the property, improvements, works, rights, privileges, or services to be acquired thereby. The ballots at the election shall contain a brief statement of the general purposes of the contract and the amount of the obligation to be assumed, with the words "Contract--Yes" and "Contract--No." The board of directors may submit the contract or proposed contract to the superior court of the county where the authority is located to determine the validity of the contract and the legal authority of the board to enter into the contract, with the same proceedings to be held as provided in this act in the case of the judicial determination of the validity of bonds issued pursuant to this act and with like effect.

(b) A proposal to purchase, lease, or otherwise acquire rights, privileges, or services by contract for which the compensation shall be payable over a period that exceeds 20 years but is not more than 40 years, is subject to referendum. To initiate a referendum, a petition protesting the proposed action shall be signed by voters within the jurisdiction of the authority equal in number to at least 5 percent of the entire number of votes cast within that jurisdiction for all candidates for governor at the last gubernatorial election.

(c) If a proposition to consider the issuance of revenue bonds under the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 6 of the Government Code) has been submitted to the qualified voters of an authority at an election held for that purpose and received the affirmative vote of a majority of the electors voting upon the proposition and, therefore, constitutes authority to issue revenue bonds under the Revenue Bond Law of 1941, the authority may, in lieu of issuing those revenue bonds, incur an indebtedness by contract, in addition to the indebtedness authorized by subdivision (a), in an amount, excluding penalties and interest, up to the amount authorized by and for the purpose authorized by the revenue bond proposition. The indebtedness shall be payable over a period of not to exceed 30 years, as provided in the resolution of the board of directors.

(d) If a contract of indebtedness incurred pursuant to subdivision (c) is repaid in full because construction of the project approved by the electorate was not commenced due to administrative, court, or other delays, resulting in failure to obtain necessary governmental permits, an authority may incur a second contract of indebtedness pursuant to subdivision (c) to fund construction of the project. The second indebtedness shall not exceed the amount authorized by the proposition approved by the electorate as provided in subdivision (c).

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 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.

CHAPTER 98

An act to amend Sections 703.140 and 704.115 of the Code of Civil Procedure, relating to exempt assets.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 703.140 of the Code of Civil Procedure is amended to read:

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption

provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed fifteen thousand dollars ($15,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed two thousand four hundred dollars ($2,400) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four hundred dollars ($400) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand dollars ($1,000) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value eight hundred dollars ($800) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed one thousand five hundred dollars ($1,500) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value eight thousand dollars ($8,000) in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed fifteen thousand dollars ($15,000), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

SEC. 2. Section 704.115 of the Code of Civil Procedure is amended to read:

704.115. (a) As used in this section, "private retirement plan" means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1986, as amended, including individual retirement accounts qualified under Section 408 or 408A of that code, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code.

(b) All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a private retirement plan are exempt.

(e) Notwithstanding subdivisions (b) and (d), except as provided in subdivision (f), the amounts described in paragraph (3) of subdivision (a) are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires. In determining the amount to be exempt under this subdivision, the court shall allow the judgment debtor such additional amount as is necessary to pay any federal and state income taxes payable as a result of the applying of an amount described in paragraph (3) of subdivision (a) to the satisfaction of the money judgment.

(f) Where the amounts described in paragraph (3) of subdivision (a) are payable periodically, the amount of the periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law). To the extent a lump sum distribution from an individual retirement account is treated differently from a periodic distribution under this subdivision, any lump sum distribution from an account qualified under Section 408A of the Internal Revenue Code shall be treated the same as a lump sum distribution from an account qualified under Section 408 of the Internal Revenue Code for

purposes of determining whether any of that payment may be applied to the satisfaction of a money judgment.

CHAPTER 99

An act to amend Section 354 of, and to amend and repeal Section 444 of, the Streets and Highways Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 354 of the Streets and Highways Code is amended to read:

354. (a) Route 54 is from Route 5 near the Sweetwater River to Route 8 near El Cajon.

(b) (1) The commission may relinquish to the City of El Cajon the portion of Route 54 that is located between the southern city limits of El Cajon and the intersection with Route 8, upon terms and conditions the commission finds to be in the best interests of the state.

(2) A relinquishment under this subdivision shall become effective immediately following the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, all of the following shall occur:

(A) The portion of Route 54 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 54 relinquished under this subdivision may not be considered for future adoption under Section 81.

(C) Route 54 shall be from Route 5 near the Sweetwater River to Route 8 near the eastern city limits of the City of El Cajon.

(c) The City of El Cajon may not impose any special restriction on the operation of buses or commercial motor vehicles, as defined in paragraph (1) of subdivision (c) of Section 34601 of the Vehicle Code, on the portion of Route 54 relinquished under subdivision (b) if that restriction is in addition to restrictions imposed by the department or authorized under other provisions of law.

SEC. 2. Section 444 of the Streets and Highways Code is amended to read:

444. (a) Route 144 is from Route 101 in Santa Barbara to Route 192 via Sycamore Canyon.

(b) 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 Route 144 to the City of Santa Barbara, if the city has agreed to accept it. The relinquishment shall

be effective on the day immediately following the commission's approval of the terms and conditions.

(c) This section shall remain in effect only until the date the relinquishment authorized under subdivision (b) becomes effective, 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. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide, at the earliest possible time, authority for the California Transportation Commission to relinquish a portion of State Highway Route 54 to the City of El Cajon, and State Highway Route 144 to the City of Santa Barbara, it is necessary that this act take effect immediately.

CHAPTER 100

An act to amend Section 6701 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 6701 of the Vehicle Code is amended to read:

6701. (a) Any nonresident owner of a vehicle registered in a foreign state who is a member or spouse of a member of the armed forces of the United States on active duty within this state, and any resident owner of a vehicle registered in a foreign state who is a member or spouse of a member of the armed forces of the United States returning from active duty in a foreign state, may operate the vehicle in this state without securing California registration after satisfying all of the following requirements:

(1) The license plates displayed on the vehicle are valid plates issued by a foreign jurisdiction.

(2) The vehicle registration and license plates are issued to the military person or spouse of the military person.

(3) The vehicle registration and license plates were issued by the foreign jurisdiction where the military person was last regularly assigned and stationed for duty by military orders or a jurisdiction claimed by the nonresident military person as the permanent state of residence.

(4) If the vehicle is a motor vehicle, the owner or driver has in force one of the forms of financial responsibility specified in Section 16021.

(b) For purposes of paragraph (3) of subdivision (a), military orders do not include military orders for leave, for temporary duty, or for any other assignment of any nature requiring the military person's presence outside the foreign jurisdiction where the owner was regularly assigned and stationed for duty.

(c) This section applies to all vehicles owned by the military person or spouse except any commercial vehicle used in any business manner wherein the military person or spouse receives compensation.

CHAPTER 101

An act to amend Section 20216 of, and to add Section 20217 to, the Public Contract Code, relating to transportation.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 20216 of the Public Contract Code is amended to read:

20216. (a) Notwithstanding any other provision of law, any contract by the San Francisco Bay Area Rapid Transit District, the Southern California Rapid Transit District, the Golden Gate Bridge, Highway and Transportation District, the San Diego Metropolitan Transit Development Board, the North San Diego County Transit Development Board, a county transportation commission that is subject to the competitive negotiation provisions of Section 20229.1, 20231.5, or 20916.3 of this code, or Section 120224.4, 125228, or 130238 of the Public Utilities Code, a transit district, city, county, city and county, or transportation agency, that is subject to the competitive negotiation provisions of Section 20217, and any other transportation agency that is authorized to use comparable competitive negotiation provisions after July 1, 1992, shall comply with the requirements of this section.

(b) Other than proprietary information, the content of any request for proposal, any proposal received, and any other communications between a transportation agency and a potential bidder on a contract that is subject to subdivision (a) shall be made available to the public no later than the same time that a recommendation for awarding a contract is made to the governing board or persons responsible for approving the award of a contract to a bidder, except that the price proposed in any bidder's initial

proposal shall be available upon the opening of the bid by the agency requesting the proposal.

(c) No person may participate in the evaluation of any proposal for the award of a contract that is subject to subdivision (a) if any of the following conditions apply:

(1) The person has a financial interest in the outcome of the evaluation or the contract.

(2) The person has received a gift of over two hundred fifty dollars ($250) during the previous 12 months from a bidder directly, or indirectly through an intermediary, if it is known to the person that the gift was in whole or in part funded by the bidder.

(d) The agency board or any person responsible for awarding a contract under this article shall not have any ex parte communication with a bidder or any representative of the bidder except in writing and if the communication is made public.

(e) A contract may not be awarded until 15 days after the staff recommendation has been made available to the public.

(f) An agency using the competitive negotiation process shall maintain in writing, and make available upon request, a complete description of the process and the policies and procedures used by the agency in doing so, including all standards, criteria, public protest procedures, and method of contract award. The agency shall also keep a complete record of its actions on each procurement.

(g) For purposes of this section and Sections 20217, 20229.1, 20231.5, and 20916.3 of this code and Sections 120224.4, 125228, and 130238 of the Public Utilities Code, "competitive negotiation" means a procurement process used by an agency in lieu of a competitive sealed bid process when conditions are not appropriate for the use of sealed bids, and that permits the consideration of price, technical experience, past performance, management, or other factors in selecting the most cost-effective proposal for the manufacture and delivery of specified goods, transit vehicles, or equipment. The process includes negotiations with manufacturers or providers after the receipt of initial proposals during which performance or technical standards and other criteria may be revised in order to secure proposals most advantageous to the purchasing agency or to cure any deficiencies contained in the original proposals.

SEC. 2. Section 20217 is added to the Public Contract Code, to read:

20217. (a) The Legislature finds and declares that the award of purchase contracts by transit agencies under competitive bid procedures may not be feasible for products and materials that are undergoing rapid technological changes or for the introduction of new technologies into agency operations, and that in these circumstances it is in the public interest to consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, vendor financing, performance reliability, standardization, life cycle costs, delivery

timetables, support logistics, and other similar factors in addition to price in the award of these contracts.

(b) Notwithstanding any other provision of law, the governing board of a transit district, city, county, city and county, or transportation agency may direct the purchase of (1) computers, telecommunications equipment, fare collection equipment, radio and microwave equipment, and other related electronic equipment and apparatus used in transit operations ; (2) specialized rail transit equipment, including, but not limited to, railcars; (3) buses; and (4) passenger ferries, by competitive negotiation upon a finding by two-thirds vote of all members of the board that the purchase of those products or materials in compliance with provisions of this code generally applicable to the purchase does not constitute a method of procurement adequate for the agency's needs. This section does not apply to contracts for construction or for the procurement of any product available in substantial quantities to the general public.

(c) Competitive negotiation, for the purposes of this section includes, but is not limited to, all of the following requirements:

(1) A request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined by the agency in its discretion, to permit reasonable competition consistent with the nature and requirements of the procurement. In addition, a notice of the request for proposals shall be published at least once in a newspaper of general circulation, which shall be made at least 10 days before the date for receipt of the proposals. The agency shall make reasonable efforts to generate the maximum feasible number of proposals from qualified sources, and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposal is received.

(2) The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.

(3) The agency shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for contract award.

(4) Prior to making an award, the agency shall prepare a price analysis and shall find that the final negotiated price is fair and reasonable based upon comparable procurement in the marketplace.

(5) The award shall be made to the qualified proposer whose proposal will be most advantageous to the agency with price and other factors considered. If the award is not made to the proposer whose proposal contains the lowest price, the agency shall make a finding setting forth the basis for the award.

(d) The agency may reject any and all proposals and issue a new request for proposals at its discretion.

(e) Upon making an award to a qualified proposer, the agency, upon request, shall make available to all other proposers and to the public, an analysis of the award that provides the basis for the selection of that particular qualified proposal.

(f) A person who submits, or who plans to submit, a proposal, may protest any acquisition conducted in accordance with this section pursuant to protest procedures established by the board as follows:

(1) Protests based on the content of the request for proposals shall be filed with the agency within 10 calendar days after the request for proposals is first advertised in accordance with subdivision (c). The agency shall issue a written decision on the protest prior to opening of proposals. A protest may be renewed by refiling the protest with the agency within 15 calendar days after the staff recommendation for award has been made available to the public as required by subdivision (e) of Section 20216.

(2) Any bidder may protest the recommended award on any ground not based upon the content of the request for proposals by filing a protest with the agency within 15 calendar days after the staff recommendation for award has been made available to the public as required by subdivision (e) of Section 20216.

(3) Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protesters shall have an opportunity to appear and be heard before the agency prior to the opening of proposals in the case of protests based on the content of the request for proposals, or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the request for proposals.

(g) Provisions in any contract concerning women and minority business enterprises, which are in accordance with the request for proposals, shall not be subject to negotiation with the successful bidder.

(h) As used in this section, "agency" includes a transit district, city, county, city and county, or transportation agency when engaged in transit operations.

CHAPTER 102

An act to amend Sections 1250.410 and 1258.220 of the Code of Civil Procedure, relating to eminent domain.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 1250.410 of the Code of Civil Procedure is amended to read:

1250.410. (a) At least 20 days prior to the date of the trial on issues relating to compensation, the plaintiff shall file with the court and serve on the defendant its final offer of compensation in the

proceeding and the defendant shall file and serve on the plaintiff its final demand for compensation in the proceeding. Such offers and demands shall be the only offers and demands considered by the court in determining the entitlement, if any, to litigation expenses. Service shall be in the manner prescribed by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(b) If the court, on motion of the defendant made within 30 days after entry of judgment, finds that the offer of the plaintiff was unreasonable and that the demand of the defendant was reasonable viewed in the light of the evidence admitted and the compensation awarded in the proceeding, the costs allowed pursuant to Section 1268.710 shall include the defendant's litigation expenses.

In determining the amount of such litigation expenses, the court shall consider the offer required to be made by the plaintiff pursuant to Section 7267.2 of the Government Code and any other written offers and demands filed and served prior to or during the trial.

(c) If timely made, the offers and demands as provided in subdivision (a) shall be considered by the court on the issue of determining an entitlement to litigation expenses.

SEC. 2. Section 1258.220 of the Code of Civil Procedure is amended to read:

1258.220. For the purposes of this article, the "date of exchange" is the date agreed to for the exchange of their lists of expert witnesses and statements of valuation data by the party who served a demand and the party on whom the demand was served or, failing such agreement, a date 60 days prior to commencement of the trial on the issue of compensation or the date set by the court on noticed motion of either party establishing good cause therefor.

CHAPTER 103

An act to amend Section 14035 of the Government Code, relating to transportation.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 14035 of the Government Code is amended to read:

14035. (a) The department may enter into contracts with the National Railroad Passenger Corporation under Section 403(b) of the Rail Passenger Service Act of 1970 (45 U.S.C. Sec. 563(b)) to provide commuter and intercity passenger rail services. The contracts may include, but are not limited to, the extension of intercity passenger rail services or the upgrading of commuter rail services.

(b) The department may contract with railroad corporations for the use of tracks and other facilities and the provision of passenger services on terms and conditions as the parties may agree.

(c) The department is the only public agency eligible to receive funds pursuant to Section 1614 of Title 49 of the United States Code.

(d) The department may construct, acquire, or lease, and improve and operate, rail passenger terminals and related facilities which provide intermodal passenger services along the following corridors: the San Diego-Los Angeles-Santa Barbara corridor, the San Francisco-San Jose-Monterey corridor, the Los Angeles-Riverside-San Bernardino-Calexico corridor, the San Jose-Oakland-Sacramento-Reno corridor, the Los Angeles-Bakersfield-Fresno-Stockton-Sacramento-Oakland corridor, and the Los Angeles-Santa Barbara-Oakland-Sacramento-Redding corridor.

(e) The department may enter into a contract with the National Railroad Passenger Corporation to provide additional trains over the San Joaquin route running between Bakersfield and Oakland and to extend the existing route to Sacramento.

(f) The Transportation Agency of Monterey County may be a party to any contract entered into under this section between the department and the National Railroad Passenger Corporation for passenger rail service along the San Francisco-San Jose-Monterey corridor.

CHAPTER 104

An act to add Section 5842.5 to the Public Resources Code, relating to parks and recreation.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 5842.5 is added to the Public Resources Code, to read:

5842.5. (a) Notwithstanding any other provision of law, the American River Parkway Plan adopted by the Legislature pursuant to Section 5842 shall be amended to permit in-line skating on the American River Parkway on a trial basis until January 1, 2001, under any terms and conditions that may be established by the Board of Supervisors of the County of Sacramento and the City Council of the City of Sacramento.

(b) The Sacramento County Department of Parks and Recreation shall monitor the trial period for in-line skating in the parkway authorized pursuant to subdivision (a) and shall report its findings to

the Board of Supervisors of the County of Sacramento and City Council of the City of Sacramento prior to December 1, 2000.

(c) If the board of supervisors and the city council determine, on or after December 1, 2000, that the trial period was successful, in-line skating may be added to the list of permitted recreational uses for the parkway on a permanent basis upon the approval of the board of supervisors and the city council.

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.

CHAPTER 105

An act to amend Section 21687 of the Public Utilities Code, relating to aviation.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 21687 of the Public Utilities Code is amended to read:

21687. (a) (1) If an airport, for which payments have been made from the Aeronautics Account, ceases to be open to the general public for more than one year, the public entity to which those payments were made shall pay to the state funds equal to the amount computed by the department pursuant to paragraph (2), and those funds shall be deposited in the Aeronautics Account.

(2) (A) The department shall compute an amount equal to the total of all payments made for the airport from the Aeronautics Account during the preceding 20 years, less 5 percent of the amount of a particular payment multiplied by the number of years since the payment was made, or the unused balance, whichever is greater.

(B) The computation described in subparagraph (A) shall not include any payment the department made pursuant to Section 21682, if, upon the request of the public entity that owns and operates the airport, the department determines that the airport is not necessary to the system of public airports in this state. When making this determination, the department shall consider all of the following factors:

(i) Whether the airport is approved for night operations.

(ii) Whether the airport has an approved instrument approach procedure.

(iii) How many aircraft are based at the airport.

(iv) Whether the airport is used for airborne fire attacks.

(v) Whether the airport is used for emergency medical transportation.

(vi) What services the airport provides for the community.

(vii) The size of the community that is served by the airport.

(viii) Whether any aviation or transportation planning agency has designated the airport as having a significant role.

(ix) Whether a suitable, public-use airport is situated within a reasonable distance.

(x) Whether closure of the airport will have a negative effect on other airports.

(xi) Whether the airport is used for law enforcement purposes.

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

(1) An airport that is replaced by a comparable facility, as determined by the department, within a period of one year.

(2) An airport for which the department, on or after January 1, 1981, has suspended the airport permit and for which payments made pursuant to this article are being expended to correct the deficiency or condition that resulted in the suspension of the airport's permit.

CHAPTER 106

An act to amend Section 4454 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 4454 of the Vehicle Code is amended to read:

4454. (a) Every owner, upon receipt of a registration card, shall maintain the same or a facsimile copy thereof with the vehicle for which issued.

(b) This section does not apply when a registration card is necessarily removed from the vehicle for the purpose of application for renewal or transfer of registration, or when the vehicle is left unattended.

(c) Any violation of this section shall be cited in accordance with the provisions of Section 40610.

CHAPTER 107

An act to amend Section 65588 of the Government Code, relating to local planning, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 65588 of the Government Code is amended to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review.

In order to facilitate effective review by the department of housing elements, the following local governments shall prepare and adopt the first two revisions of their housing elements no later than the dates specified in the following schedule, notwithstanding the date of adoption of the housing elements in existence on June 20, 1984.

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: July 1, 1984, for the first revision and July 1, 1989, for the second revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: January 1, 1985, for the first revision, and July 1, 1990, for the second revision.

(3) Local governments within the regional jurisdiction of the San Diego Association of Governments, the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: July 1, 1985, for the first revision, and July 1, 1991, for the second revision.

(4) All other local governments: January 1, 1986, for the first revision, and July 1, 1992, for the second revision.

(5) Subsequent revisions shall be completed not less often than at five-year intervals following the second revision.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding the requirements of paragraph (5) of subdivision (b), the dates of revisions for the housing element shall be modified upon the effective date of this provision as follows:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 2000, for the third revision, and June 30, 2005, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2001, for the third revision, and June 30, 2006, for the fourth revision.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: June 30, 2002, for the third revision, and June 30, 2007, for the fourth revision.

(4) Local governments within the regional jurisdiction of the San Diego Association of Governments: December 31, 1999, for the third revision cycle ending June 30, 1999, and June 30, 2004, for the fourth revision.

(5) All other local governments: June 30, 2003, for the third revision, and June 30, 2008, for the fourth revision.

(6) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.

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 meet effectively the needs of local agencies that desire to implement the housing elements of their general plans in a prompt yet comprehensive fashion, it is necessary for this act to take effect immediately.

CHAPTER 108

An act to add Section 8484.6 to the Education Code, relating to after school programs.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 8484.6 is added to the Education Code, to read:

8484.6. (a) Programs established pursuant to this article may be conducted upon the grounds of a community park or recreational area if the park or recreational area is adjacent to the schoolsite.

(b) An offsite program conducted pursuant to this section shall comply with all statutory and regulatory requirements that are applicable to similar programs conducted on the schoolsite.

CHAPTER 109

An act to add Section 20301.5 to the Public Contract Code, relating to transportation.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. 20301.5 is added to the Public Contract Code, to read:

20301.5. (a) Notwithstanding Section 20301, the district may let a design-and-build contract for any project for a transit center or station, transit park-and-ride lot, bus and light rail maintenance facility, or administrative office building, or any combination of those, upon approval by the board of directors.

(b) (1) If the board of directors elects to proceed under subdivision (a), before entering into any contract that requires advertising for bids for a project, the board shall cause to be prepared

estimates, and shall prepare documents, for the solicitation of bids on a design-and-build basis.

(2) For the purposes of this section, "design and build" means a method of procuring design and construction from a single source. The selection of the single source shall occur before the development of complete plans and specifications.

(c) The request for submission of bids shall include all of the following:

(1) A clear, precise description of the services to be provided and work to be performed.

(2) A description of the format that submittals shall follow and the elements they shall contain, including the qualifications and relevant experience of the design professional and the contractor, and the criteria that shall be used in evaluating the submittal, including the bid price.

(3) A requirement that bidders submit their proposals with the construction bid price and all cost information in a separate sealed envelope.

(4) The date on which the submittals are due, and the timetable that will be used in reviewing and evaluating the submittals.

(d) All submittals received prior to the closing time stated in the request for submittal shall be reviewed to determine those that meet the format requirements and the standards specified in the request for submittal.

(e) The contract shall be awarded to the lowest responsible bidder meeting the standards of the request for submittal.

(f) For the purposes of this section, selections of design professionals shall meet the standards set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(g) This section shall apply only to a project that is under the supervision of a licensed general building contractor, as defined in Section 7057 of the Business and Professions Code.

CHAPTER 110

An act to add Chapter 2.95 (commencing with Section 7286.56) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Chapter 2.95 (commencing with Section 7286.56) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.95. YUCCA VALLEY TRANSACTIONS AND USE TAX

7286.56. (a) Subject to subdivision (b), the Town of Yucca Valley may levy a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, not to exceed 1 percent, if an ordinance or resolution proposing that tax is approved by a majority vote of all the members of the town council and the tax is approved by a two-thirds vote of the qualified voters of the town voting in an election on the issue.

(b) (1) Any transactions and use tax levied under this section shall be levied pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(2) The net revenues derived from a tax levied under this section shall be expended exclusively for transportation and the repair, replacement, construction, or reconstruction of the town's parks.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely severe fiscal difficulties being experienced by the Town of Yucca Valley in providing adequate transportation and park facilities to its residents.

CHAPTER 111

An act to amend Sections 832.6 and 12020 of the Penal Code, relating to peace officers, declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 832.6 of the Penal Code is amended to read:

832.6. (a) Every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) A level I reserve officer deputized or appointed pursuant to paragraph (1) or (2) of subdivision (a) or subdivision (b) of Section 830.6 and assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working

alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. For level I reserve officers appointed prior to January 1, 1997, the basic training requirement shall be the course that was prescribed at the time of their appointment. Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.

(2) A level II reserve officer assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer who has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training, and the level II reserve officer has completed the course required by Section 832 and any other training prescribed by the commission.

Level II reserve officers appointed pursuant to this paragraph may be assigned, without immediate supervision, to those limited duties that are authorized for level III reserve officers pursuant to paragraph (3). Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.

(3) Level III reserve officers may be deployed and are authorized only to carry out limited support duties not requiring general law enforcement powers in their routine performance. Those limited duties shall include traffic control, security at parades and sporting events, report taking, evidence transportation, parking enforcement, and other duties that are not likely to result in physical arrests. Level III reserve officers while assigned these duties shall be supervised in the accessible vicinity by a level I reserve officer or a full-time, regular peace officer employed by a law enforcement agency authorized to have reserve officers. Level III reserve officers may transport prisoners without immediate supervision. Those persons shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons.

(4) A person assigned to the prevention and detection of a particular crime or crimes or to the detection or apprehension of a particular individual or individuals while working under the supervision of a California peace officer in a county adjacent to the state border who possesses a basic certificate issued by the Commission on Peace Officer Standards and Training, and the person is a law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and has completed the basic training required for peace officers in his or her state.

(5) For purposes of this section, a reserve officer who has previously satisfied any training requirement pursuant to this section

and has been serving as a level I or II reserve officer in one law enforcement agency shall be deemed to remain qualified as to Commission on Peace Officer Standards and Training requirements even though that reserve officer accepts a new appointment at the same level in another law enforcement agency.

This training shall fully satisfy any other training requirements required by law, including those specified in Section 832.

In no case shall a peace officer of an adjoining state provide services within a California jurisdiction during any period in which the regular law enforcement agency of the jurisdiction is involved in a labor dispute.

(b) Notwithstanding subdivision (a), a person who is issued a level I reserve officer certificate before January 1, 1981, shall have the full powers and duties of a peace officer as provided by Section 830.1 if so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, if the appointing authority determines the person is qualified to perform general law enforcement duties by reason of the person's training and experience. Persons who were qualified to be issued the level I reserve officer certificate before January 1, 1981, and who state in writing under penalty of perjury that they applied for but were not issued the certificate before January 1, 1981, may be issued the certificate before July 1, 1984. For purposes of this section, certificates so issued shall be deemed to have the full force and effect of any level I reserve officer certificate issued prior to January 1, 1981.

(c) In carrying out this section, the commission:

(1) May use proficiency testing to satisfy reserve training standards.

(2) Shall provide for convenient training to remote areas in the state.

(3) Shall establish a professional certificate for reserve officers as defined in paragraph (1) of subdivision (a) and may establish a professional certificate for reserve officers as defined in paragraphs (2) and (3) of subdivision (a).

(4) Shall facilitate the voluntary transition of reserve officers to regular officers with no unnecessary redundancy between the training required for level I and level II reserve officers.

(5) Shall develop a supplemental course for existing level I reserve officers desiring to satisfy the basic training course for deputy sheriffs and police officers.

(d) In carrying out paragraphs (1) and (3) of subdivision (c), the commission may establish and levy appropriate fees, provided the fees do not exceed the cost for administering the respective services. These fees shall be deposited in the Peace Officers' Training Fund established by Section 13520.

(e) The commission shall include an amount in its annual budget request to carry out this section.

SEC. 2. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition, or who carries concealed upon his or her person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or in the state prison. However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

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

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by peace officer members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties and the peace officer has completed a training course in the use of these weapons certified by the Commission on Peace Officer Standards and Training.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are

properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of

subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined

in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring,

elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least $2^1/_2$ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects

likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for exemptions regarding the use and possession of firearms by reserve peace officers to become effective as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 112

An act to amend Sections 831.4 and 12002 of the Penal Code, relating to security officers.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 831.4 of the Penal Code is amended to read:

831.4. (a) A sheriff's or police security officer is a public officer, employed by the sheriff of a county or police chief of a city, whose primary duty is the security of locations or facilities as directed by the sheriff or police chief. The duties of a sheriff's or police security officer shall be limited to the physical security and protection of properties owned, operated, controlled, or administered by the county or city, or any municipality or special district contracting for police services from the county or city pursuant to Section 54981 of

the Government Code, or necessary duties with respect to the patrons, employees, and properties of the employing county, city, or contracting entities.

(b) A sheriff's or police security officer is not a peace officer nor a public safety officer as defined in Section 3301 of the Government Code. A sheriff's or police security officer may carry or possess a firearm, baton, and other safety equipment and weapons authorized by the sheriff or police chief while performing the duties authorized in this section, and under the terms and conditions specified by the sheriff or police chief. These persons may not exercise the powers of arrest of a peace officer, but may issue citations for infractions if authorized by the sheriff or police chief.

(c) Each sheriff's or police security officer shall satisfactorily complete a course of training as specified in Section 832 prior to being assigned to perform his or her duties. Nothing in this subdivision shall preclude the sheriff or police chief from requiring additional training requirements.

(d) Notwithstanding any other law, nothing in this section shall be construed to confer any authority upon any sheriff's or police security officer except while on duty, or confer any additional retirement benefits to persons employed within this classification.

SEC. 2. Section 12002 of the Penal Code is amended to read:

12002. (a) Nothing in this chapter prohibits police officers, special police officers, peace officers, or law enforcement officers from carrying any wooden club, baton, or any equipment authorized for the enforcement of law or ordinance in any city or county.

(b) Nothing in this chapter prohibits a uniformed security guard, regularly employed and compensated as such by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment, from carrying any wooden club or baton if the uniformed security guard has satisfactorily completed a course of instruction certified by the Department of Consumer Affairs in the carrying and use of the club or baton. The training institution certified by the Department of Consumer Affairs to present this course, whether public or private, is authorized to charge a fee covering the cost of the training.

(c) The Department of Consumer Affairs, in cooperation with the Commission on Peace Officer Standards and Training, shall develop standards for a course in the carrying and use of the club or baton.

(d) Any uniformed security guard who successfully completes a course of instruction under this section is entitled to receive a permit to carry and use a club or baton within the scope of his or her employment, issued by the Department of Consumer Affairs. The department may authorize certified training institutions to issue permits to carry and use a club or baton. A fee in the amount provided by law shall be charged by the Department of Consumer Affairs to offset the costs incurred by the department in course certification,

quality control activities associated with the course, and issuance of the permit.

(e) Any person who has received a permit or certificate which indicates satisfactory completion of a club or baton training course approved by the Commission on Peace Officer Standards and Training prior to January 1, 1983, shall not be required to obtain a baton or club permit or complete a course certified by the Department of Consumer Affairs.

(f) Any person employed as a county sheriff's or police security officer, as defined in Section 831.4, shall not be required to obtain a club or baton permit or to complete a course certified by the Department of Consumer Affairs in the carrying and use of a club or baton, provided that the person completes a course approved by the Commission on Peace Officer Standards and Training in the carrying and use of the club or baton, within 90 days of employment.

CHAPTER 113

An act to add Sections 1208.2 and 1208.3 to the Penal Code, relating to punishment.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 1208.2 is added to the Penal Code, to read:

1208.2. (a) (1) This section shall apply to individuals authorized to participate in a work furlough program pursuant to Section 1208, or to individuals authorized to participate in an electronic home detention program pursuant to Section 1203.016, or to individuals authorized to participate in a county parole program pursuant to Article 3.5 (commencing with Section 3074) of Chapter 8 of Title 1 of Part 3.

(2) As used in this section, as appropriate, "administrator" means the sheriff, probation officer, director of the county department of corrections, or county parole administrator.

(b) (1) A board of supervisors which implements programs identified in paragraph (1) of subdivision (a), may prescribe a program administrative fee and an application fee, that together shall not exceed the pro rata cost of the program to which the person is accepted, including equipment, supervision, and other operating costs, except as provided in paragraph (2).

(2) With regard to a privately operated electronic home detention program pursuant to Section 1203.016, the limitation, described in paragraph (1), in prescribing a program administrative fee and application fee shall not apply.

(c) The correctional administrator, or his or her designee, shall not have access to a person's financial data prior to granting or denying a person's participation in, or assigning a person to, any of the programs governed by this section.

(d) The correctional administrator, or his or her designee, shall not consider a person's ability or inability to pay all or a portion of the program fee for the purposes of granting or denying a person's participation in, or assigning a person to, any of the programs governed by this section.

(e) For purposes of this section, "ability to pay" means the overall capability of the person to reimburse the costs, or a portion of the costs, of providing supervision and shall include, but shall not be limited to, consideration of all of the following factors:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the administrator, or his or her designee, consider a period of more than six months from the date of acceptance into the program for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the person shall be able to obtain employment within the six-month period from the date of acceptance into the program.

(4) Any other factor that may bear upon the person's financial capability to reimburse the county for the fees fixed pursuant to subdivision (b).

(f) The administrator, or his or her designee, may charge a person the fee set by the board of supervisors or any portion of the fee and may determine the method and frequency of payment. Any fee the administrator, or his or her designee, charges pursuant to this section shall not in any case be in excess of the fee set by the board of supervisors and shall be based on the person's ability to pay. The administrator, or his or her designee, shall have the option to waive the fees for program supervision when deemed necessary, justified, or in the interests of justice. The fees charged for program supervision may be modified or waived at any time based on the changing financial position of the person. All fees paid by persons for program supervision shall be deposited into the general fund of the county.

(g) No person shall be denied consideration for, or be removed from, participation in any of the programs to which this section applies because of an inability to pay all or a portion of the program supervision fees. At any time during a person's sentence, the person may request that the administrator, or his or her designee, modify or suspend the payment of fees on the grounds of a change in circumstances with regard to the person's ability to pay.

(h) If the person and the administrator, or his or her designee, are unable to come to an agreement regarding the person's ability to pay, or the amount which is to be paid, or the method and frequency with

which payment is to be made, the administrator, or his or her designee, shall advise the appropriate court of the fact that the person and administrator, or his or her designee, have not been able to reach agreement and the court shall then resolve the disagreement by determining the person's ability to pay, the amount which is to be paid, and the method and frequency with which payment is to be made.

(i) At the time a person is approved for any of the programs to which this section applies, the administrator, or his or her designee, shall furnish the person a written statement of the person's rights in regard to the program for which the person has been approved, including, but not limited to, both of the following:

(1) The fact that the person cannot be denied consideration for or removed from participation in the program because of an inability to pay.

(2) The fact that if the person is unable to reach agreement with the administrator, or his or her designee, regarding the person's ability to pay, the amount which is to be paid, or the manner and frequency with which payment is to be made, that the matter shall be referred to the court to resolve the differences.

(j) In all circumstances where a county board of supervisors has approved a program administrator, as described in Sections 1203.016 and 1208, to enter into a contract with a private agency or entity to provide specified program services, the program administrator shall ensure that the provisions of this section are contained within any contractual agreement for this purpose. All privately operated home detention programs shall comply with all appropriate, applicable ordinances and regulations specified in subdivision (a) of Section 1208.

SEC. 2. Section 1208.3 is added to the Penal Code, to read:

1208.3. The administrator is not prohibited by subdivision (c) of Section 1208.2 from verifying any of the following:

(a) That the prisoner is receiving wages at a rate of pay not less than the prevailing minimum wage requirement as provided for in subdivision (c) of Section 1208.

(b) That the prisoner is working a specified minimum number of required hours.

(c) That the prisoner is covered under an appropriate or suitable workers' compensation insurance plan as may otherwise be required by law.

The purpose of the verification shall be solely to insure that the prisoner's employment rights are being protected, that the prisoner is not being taken advantage of, that the job is suitable for the prisoner, and that the prisoner is making every reasonable effort to make a productive contribution to the community.

———

CHAPTER 114

An act to amend Section 1569.73 of the Health and Safety Code, relating to community care facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 1569.73 of the Health and Safety Code is amended to read:

1569.73. (a) Notwithstanding Section 1569.72 or any other provision of law, a residential care facility for the elderly may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician or surgeon to remain in the facility when all the following conditions are met:

(1) The facility agrees to retain the terminally ill resident and to seek a waiver on behalf of the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident, and is in substantial compliance with regulations governing the operation of residential care facilities for the elderly.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks allowed under this chapter.

(6) The facility has obtained the agreement of those residents who share the same room with the terminally ill resident to allow the hospice caregivers into their residence.

(b) At any time that the licensed hospice, the facility, or the terminally ill resident determines that the resident's condition has

changed so that continued residence in the facility will pose a threat to the health and safety to the terminally ill resident or any other resident, the facility may initiate procedures for a transfer.

(c) Nothing in this section is intended to expand the scope of care and supervision for a residential care facility for the elderly as defined in this act, nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident as authorized by this section.

(d) 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.

(e) Nothing in this section is intended to expand the scope of life care contracts or the contractual obligation of continuing care retirement communities as defined in Section 1771.

(f) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice.

(g) Nothing in this section shall be construed to relieve a licensed residential care facility for the elderly of its responsibility to notify the appropriate fire authority of the presence of a bedridden resident in the facility as required under subdivision (e) of Section 1569.72, and to obtain and maintain a fire clearance as required under Section 1569.149.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit as soon as possible certain residents diagnosed as terminally ill to remain in residential care facilities for the elderly, it is necessary that this act take effect immediately.

CHAPTER 115

An act to add and repeal Section 26826.3 of the Government Code, relating to filing fees.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 26826.3 is added to the Government Code, to read:

26826.3. (a) It is the policy of the state that each court shall endeavor to provide a children's waiting room in each courthouse for children whose parents or guardians are attending a court hearing as a litigant, witness, or for other court purposes as determined by the

court. To defray that expense, in any county having established a children's waiting room or that elects to establish such a service, the board of supervisors may, after giving notice and holding a public hearing on the proposal, impose a surcharge of not less than two dollars ($2) and not more than five dollars ($5) for the filing in superior court of (1) a complaint, petition, or other first paper in a civil or probate action or special proceeding, (2) a first paper on behalf of any defendant, respondent, intervenor, or adverse party, (3) a motion for change of venue from another court, or (4) a first paper on behalf of any party in a proceeding under Section 98.2 of the Labor Code. This surcharge shall be in addition to the total filing fee, as defined in Section 26820.6, and as applicable to Section 26820.4, 26826, 26827, or any other fee authorized by this code. No party shall be required to pay the five dollar ($5) surcharge more than once in any action.

(b) The surcharge shall be remitted monthly by the clerk to the county treasurer, to be retained by the treasurer in a special fund designated as the Children's Waiting Room Fund. The board of supervisors shall make expenditures from the fund in payment of any cost, excluding capital outlay, related to the establishment and maintenance of the children's waiting room, including personnel, heat, light, telephone, security, rental of space, furnishings, toys, books, or any other item in connection with the operation of a children's waiting room.

(c) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute deletes or extends that date.

SEC. 2. It is the intent of the Legislature that the surcharge authorized pursuant to this act shall be used to provide children's waiting room services for children whose parents or guardians attend court proceedings on an infrequent basis, either as litigants, witnesses, or for other court purposes, as determined by the court.

CHAPTER 116

An act to amend Section 31469.5 of the Government Code, relating to county employees.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 31469.5 of the Government Code is amended to read:

31469.5. (a) This section shall be applicable in the retirement system of any county of the 10th class, as defined by Sections 28020

and 28031, as amended by Chapter 1204 of the Statutes of 1971, if the board of supervisors executes a memorandum of understanding with the employee representatives and adopts, by majority vote, a resolution providing for safety status for probation officers, as provided in Section 31469.4.

(b) The purpose of this section is to provide optional safety status for probation officers employed on or before March 1, 1991. Notwithstanding Section 31558.6, that option shall be exercised within 120 days from the effective date of the implementation of Section 31469.4, together with the option to receive credit as a safety member for all or part of the time during which his or her duties would have made him or her eligible to become a safety member, if this section had then been in effect.

(c) Except as otherwise provided in this section, the retirement benefits of existing probation officers who elect to transfer from general membership in the county retirement system to safety membership shall be implemented pursuant to Section 31484.5, except that:

(1) The definition of final compensation in Section 31462.1 shall no longer apply to probation officers electing safety status; instead, the definition of final compensation in Section 31462 shall apply at the date of retirement to all credited safety service regardless of previous service under Section 31462.1. However, the board of supervisors may adopt a resolution providing that the definition of final compensation contained in Section 31462.1 shall apply to certain probation officers electing safety status and as specifically identified in the resolution and who are retiring on or after the date specified in the resolution.

(2) For employees entitled to a cost-of-living adjustment upon retirement, Article 16.5 (commencing with Section 31870) shall apply, except that the increase in the allowance shall not exceed a maximum amount of 3 percent in any given year credited as safety membership. An employee who elects safety retirement under Section 31469.4 and who thereby waives his or her entitlement to a higher cost-of-living allowance shall be deemed to have waived the higher cost-of-living allowance with regard to all previous service credited as safety service at the date of retirement, regardless of previous service under any other provision and shall be deemed to have relinquished any right to the higher cost-of-living allowance without refund of contributions therefor, except as determined by the board of supervisors.

(3) An employee who elects safety retirement under Section 31469.4 may elect to receive credit as a safety member for all or part of the time during which his or her duties would have made him or her eligible to become a safety member if this section had then been in effect as provided in Section 31639.7, except that an election to receive part credit may be exercised only in multiples of five years of service. A member who elects to receive credit for only a part of

that county service shall elect that county service latest in time and may not receive credit for any portion of county service prior in time to any county service for which he or she does not elect to received credit.

(4) A member not previously within the safety membership category who elects to receive credit for all or part of the time during which the member's duties would have made him or her eligible to become a safety member if this section had then been in effect shall pay into the retirement system the amount that would have had to be contributed by the employer to fund the employer's liability for safety membership and an amount equal to the difference between the employee's contributions actually made during the time for which he or she claims credit and the contributions the member would have made during that period if he or she had been in safety status during that period.

(d) All probation officers in Tier III who elect to transfer from general membership in the county retirement system to safety membership pursuant to this section shall be placed in Tier II regardless of their status prior to selecting Tier III benefits.

(e) All persons hired after the effective date of implementation of Section 31469.4 shall, upon retirement, have his or her cost-of-living allowance and final compensation computed in accordance with this section.

CHAPTER 117

An act to amend Section 17273 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 17273 of the Revenue and Taxation Code is amended to read:

17273. For each taxable year beginning on or after January 1, 1999, Section 162(*l*)(1) of the Internal Revenue Code, relating to applicable percentage, is modified to provide that Section 2002 of the Tax and Trade Relief Extension Act of 1998 (P.L. 105-277), relating to phasein of a 100-percent deduction for health insurance, shall apply.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 118

An act to amend Section 2040 of the Family Code, relating to dissolution of marriage.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 2040 of the Family Code is amended to read:

2040. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability held for the benefit of the parties and their child or children for whom support may be ordered.

(b) In all actions filed on and after January 1, 1995, the summons shall contain the following notice:

"WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to

be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property."

CHAPTER 119

An act to amend Section 1102.2 of the Civil Code, relating to real property transfer disclosures.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

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

SECTION 1. Section 1102.2 of the Civil Code is amended to read:

1102.2. This article does not apply to the following:

(a) Transfers which are required to be preceded by the furnishing to a prospective transferee of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code and transfers which can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code.

(b) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(c) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

(d) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust. This exemption shall not apply to a transfer if the trustee is a natural

person who is sole trustee of a revocable trust and he or she is a former owner of the property or an occupant in possession of the property within the preceding year.

(e) Transfers from one coowner to one or more other coowners.

(f) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(g) Transfers between spouses resulting from a judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to that judgment.

(h) Transfers by the Controller in the course of administering Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(i) Transfers under Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(j) Transfers or exchanges to or from any governmental entity.

CHAPTER 120

An act to amend Section 340.1 of the Code of Civil Procedure, relating to commencement of actions.

[Approved by Governor July 14, 1999. Filed with Secretary of State July 14, 1999.]

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

SECTION 1. Section 340.1 of the Code of Civil Procedure is amended to read:

340.1. (a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions:

(1) An action against any person for committing an act of childhood sexual abuse.

(2) An action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.

(3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.

(b) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.

(c) "Childhood sexual abuse" as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under the age of 18 years and that would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; Section 647.6 of the Penal Code; or any prior laws of this state of similar effect at the time the act was committed. Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.

(d) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this section.

(e) Every plaintiff 26 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (f).

(f) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts which support the declaration:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. The person consulted may not be a party to the litigation.

(2) That the mental health practitioner consulted is licensed to practice and practices in this state and is not a party to the action, that the practitioner is not treating and has not treated the plaintiff, and that the practitioner has interviewed the plaintiff and is knowledgeable of the relevant facts and issues involved in the particular action, and has concluded, on the basis of his or her knowledge of the facts and issues, that in his or her professional opinion there is a reasonable basis to believe that the plaintiff had been subject to childhood sexual abuse.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificates required by paragraphs (1) and (2) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificates

required by paragraphs (1) and (2) shall be filed within 60 days after filing the complaint.

(g) Where certificates are required pursuant to subdivision (e), the attorney for the plaintiff shall execute a separate certificate of merit for each defendant named in the complaint.

(h) In any action subject to subdivision (e), no defendant may be served, nor shall the duty to serve a defendant with process attach, until the court has reviewed the certificates of merit filed pursuant to subdivision (f) with respect to that defendant, and has found, in camera, based solely on those certificates of merit, that there is reasonable and meritorious cause for the filing of the action against that defendant. At that time, the duty to serve that defendant with process shall attach.

(i) A violation of this section may constitute unprofessional conduct and may be the grounds for discipline against the attorney.

(j) The failure to file certificates in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(k) In any action subject to subdivision (e), no defendant may be named except by "Doe" designation in any pleadings or papers filed in the action until there has been a showing of corroborative fact as to the charging allegations against that defendant.

(*l*) At any time after the action is filed, plaintiff may apply to the court for permission to amend the complaint to substitute the name of the defendant or defendants for the fictitious designation, as follows:

(1) The application shall be accompanied by a certificate of corroborative fact executed by the attorney for the plaintiff. The certificate shall declare that the attorney has discovered one or more facts corroborative of one or more of the charging allegations against a defendant or defendants, and shall set forth in clear and concise terms the nature and substance of the corroborative fact. If the corroborative fact is evidenced by the statement of a witness or the contents of a document, the certificate shall declare that the attorney has personal knowledge of the witness's statement or of the contents of the document, and the identity and location of the witness or document shall be included in the certificate. For purposes of this section, a fact is corroborative of an allegation if it confirms or supports the allegation. The opinion of any mental health practitioner concerning the plaintiff shall not constitute a corroborative fact for purposes of this section.

(2) Where the application to name a defendant is made prior to that defendant's appearance in the action, neither the application nor the certificate of corroborative fact by the attorney shall be served on the defendant or defendants, nor on any other party or their counsel of record.

(3) Where the application to name a defendant is made after that defendant's appearance in the action, the application shall be served

on all parties and proof of service thereof provided to the court, but the certificate of corroborative fact by the attorney shall not be served on any party or their counsel of record.

(m) The court shall review the application and the certificate of corroborative fact in camera and, based solely on the certificate and any reasonable inferences to be drawn therefrom, shall, if one or more facts corroborative of one or more of the charging allegations against a defendant has been shown, order that the complaint may be amended to substitute the name of the defendant or defendants.

(n) The court shall keep under seal and confidential from the public and all parties to the litigation other than the plaintiff any and all certificates of corroborative fact filed pursuant to subdivision (*l*).

(o) Upon the favorable conclusion of the litigation with respect to any defendant for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the court may, upon the motion of a party or upon the court's own motion, verify compliance with this section by requiring the attorney for the plaintiff who was required by subdivision (f) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (f) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in camera and in the absence of the moving party. If the court finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit should have been filed.

(p) The amendments to this section enacted at the 1990 portion of the 1989–90 Regular Session shall apply to any action commenced on or after January 1, 1991, including any action otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991.

(q) The Legislature declares that it is the intent of the Legislature, in enacting the amendments to this section enacted at the 1994 portion of the 1993–94 Regular Session, that the express language of revival added to this section by those amendments shall apply to any action commenced on or after January 1, 1991.

(r) Nothing in the amendments to this section enacted at the 1998 portion of the 1997–98 Regular Session is intended to create a new theory of liability.

(s) The amendments to subdivision (a) of this section, enacted at the 1998 portion of the 1997–98 Regular Session, shall apply to any action commenced on or after January 1, 1999, and to any action filed prior to January 1, 1999, and still pending on that date, including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999. Nothing in this subdivision is

intended to revive actions or causes of action as to which there has been a final adjudication prior to January 1, 1999.

CHAPTER 121

An act to amend Section 1202.4 of the Penal Code, relating to restitution.

[Approved by Governor July 14, 1999. Filed with Secretary of State July 14, 1999.]

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

SECTION 1. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not

be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health therapy expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(4) Except as provided in paragraph (5), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. This disclosure shall be available to the victim pursuant to Section 1214, and any use the court may make of the disclosure shall be subject to the restrictions of subdivision (g). The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(5) A defendant who fails to file the financial disclosure required in paragraph (4), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (4), and paragraphs (6), (7), (8), and (9) shall not apply.

(6) Except as provided in paragraph (5), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(7) In its discretion, the court may relieve the defendant of the duty under paragraph (6) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(8) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (4) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(9) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (4) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (4) as a condition of probation or suspended sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution

order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim. "Victim" shall also include any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) (1) This section shall become operative on January 1, 2000, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1214 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

CHAPTER 122

An act to add and repeal Section 14601.9 to the Vehicle Code, relating to vehicles.

[Approved by Governor July 14, 1999. Filed with Secretary of State July 14, 1999.]

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

SECTION 1. Section 14601.9 is added to the Vehicle Code, to read:

14601.9. (a) The district attorney of any of the Counties of Alameda, Kern, Los Angeles, Orange, Placer, Sacramento, San Joaquin, San Luis Obispo, and Santa Barbara, with the approval of the board of supervisors, may establish a pilot program of persons who plead guilty or no contest or who are found guilty of a violation of Section 14601, 14601.1, or 14601.3. The district attorney may conduct the program or contract with a private entity to conduct the program.

(b) Subject to the approval of the court, a person who pleads guilty or no contest or is convicted of violating Section 14601, 14601.1, or 14601.3 may enter into a written agreement with a district attorney of a county described in subdivision (a). If the court determines that the particular case is appropriate for referral to a program described in this section, the judge may make an order directing the person to comply with the terms of the agreement. Participation in the program shall be in lieu of imposing a jail sentence under Section 14601, 14601.1, or 14601.3. The agreement shall require the person to complete all of the following elements within 60 days or within the term of the maximum jail sentence allowed under Section 14601, 14601.1, or 14601.3, whichever period is longer:

(1) A home detention program utilizing an electronic monitoring program that complies with Section 1203.016 of the Penal Code, for not less than the minimum jail sentence, and not more than the

maximum jail sentence, provided under Section 14601, 14601.1, or 14601.3, as applicable. The court may allow a person to attend school, work, or other specified activities while on electronic monitoring.

(2) One or more classes conducted by the district attorney or by a private entity under contract with the district attorney. The class or classes, at a minimum, shall provide instruction on all of the following:

(A) The requirements imposed under Section 14601, 14601.1, or 14601.3, including, but not limited to, the penalties for violating those provisions.

(B) Available transportation alternatives for persons who do not have a valid driver's license.

(C) The procedure for regaining the privilege to drive.

(c) No statement, or information procured from a statement, made by the person in connection with the determination of his or her eligibility for the program, and no statement, or information procured from a statement, made by the person, subsequent to the granting of the program or while participating in the program, and no information contained in any report made with respect thereto, and no statement or other information concerning the person's participation in the program shall be admissible in any action or proceeding.

(d) The court may impose any fine allowed under Section 14601, 14601.1, or 14601.3 upon a person who is ordered to participate in the program.

(e) (1) The district attorney may recover fees for the program from participants or may provide for recovery of fees from participants by a private entity operating the program under contract.

(2) The recoverable fees described in this subdivision shall be charged to the participant in accordance with a fee schedule that has been approved by the board of supervisors or the district attorney, or designee of the district attorney. The fees charged for the program may be modified or waived by the district attorney or designee at any time based on the present or changing financial position of the participant. No person shall be denied participation in the program due to an inability to pay for the program.

(f) Notwithstanding Section 7550.5 of the Government Code, not later than December 31, 2003, the district attorney of every county that elects to participate in the pilot program specified in subdivision (a) shall prepare and submit a report to the Legislature concerning that county's participation in the program.

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

———

CHAPTER 123

An act to amend Section 7522 of the Business and Professions Code, relating to private investigators.

[Approved by Governor July 14, 1999. Filed with Secretary of State July 14, 1999.]

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

SECTION 1. Section 7522 of the Business and Professions Code is amended to read:

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of such employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(g) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(h) A person engaged solely in the business of securing information about persons or property from public records.

(i) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private investigator or contracts for his or her services as or is employed as an armed private investigator. For purposes of this subdivision, "armed private investigator" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(j) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(k) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(*l*) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(m) The act of serving process by an individual who is registered as a process server pursuant to Section 22350.

(n) (1) A person or business engaged in conducting objective observations of consumer purchases of products or services in the public environments of a business establishment by the use of a preestablished questionnaire, provided that person or business entity does not engage in any other activity that requires licensure pursuant to this chapter. The questionnaire may include objective comments.

(2) If a preestablished questionnaire is used as a basis, but not the sole basis, for disciplining or discharging an employee, or for conducting an interview with the employee that might result in the employee being terminated, the employer shall provide the employee with a copy of that questionnaire using the same procedures that an employer is required to follow under Section 2930 of the Labor Code for providing an employee with a copy of a shopping investigator's report. This subdivision does not exempt from this chapter a person or business described in paragraph (1) if a preestablished questionnaire of that person or business is used as the sole basis for evaluating an employee's work performance.

CHAPTER 124

An act to amend Section 4603.2 of, and to add Section 4600.4 to, the Labor Code, relating to workers' compensation.

[Approved by Governor July 14, 1999. Filed with Secretary of State July 14, 1999.]

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

SECTION 1. Section 4600.4 is added to the Labor Code, to read:

4600.4. (a) A workers' compensation insurer, third-party administrator, or other entity that requires, or pursuant to regulation requires, a treating physician to obtain either utilization review or prior authorization in order to diagnose or treat injuries or diseases compensable under this article, shall ensure the availability of those services from 9 a.m. to 5:30 p.m. Pacific coast time of each normal business day.

(b) For purposes of this section "normal business day" means a business day as defined in Section 9 of the Civil Code.

SEC. 2. Section 4603.2 of the Labor Code is amended to read:

4603.2. (a) Upon selecting a physician pursuant to Section 4600, the employee or physician shall forthwith notify the employer of the name and address of the physician. The physician shall submit a report to the employer within five working days from the date of the initial examination and shall submit periodic reports at intervals that may be prescribed by rules and regulations adopted by the administrative director.

(b) Payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made by the employer within 60 days after receipt of each separate, itemized billing, together with any required reports. If the billing or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the billing is contested, denied, or considered incomplete, within 30 working days after receipt of the billing by the employer. A notice that a billing is incomplete shall state all additional information required to make a decision. Any properly documented amount not paid within the 60-day period shall be increased by 10 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the bill, unless the employer does both of the following:

(1) Pays the uncontested amount within the 60-day period.

(2) Advises, in the manner prescribed by the administrative director, the physician, or another provider of the items being contested, the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees. In the case of a bill which includes charges from a hospital, outpatient surgery center, or independent diagnostic facility, advice that a request has been made for an audit of the bill shall satisfy the requirements of this paragraph.

If an employer contests all or part of a billing, any amount determined payable by the appeals board shall carry interest from the date the amount was due until it is paid.

An employer's liability to a physician or another provider under this section for delayed payments shall not affect its liability to an employee under Section 5814 or any other provision of this division.

(c) Any interest or increase in compensation paid by an insurer pursuant to this section shall be treated in the same manner as an increase in compensation under subdivision (d) of Section 4650 for the purposes of any classification of risks and premium rates, and any system of merit rating approved or issued pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of the Insurance Code.

CHAPTER 125

An act to amend Section 8730 of the Business and Professions Code, relating to land surveyors.

[Approved by Governor July 14, 1999. Filed with Secretary of State July 14, 1999.]

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

SECTION 1. Section 8730 of the Business and Professions Code is amended to read:

8730. The following persons are not required to be licensed under this chapter:

(a) Officers and employees of the United States of America, practicing solely as those officers or employees, except when surveying the exterior boundaries of federal lands in this state.

(b) Insofar as he or she acts in the following capacity:

(1) Any state, county, city, city and county, or district employee directly responsible to a licensed land surveyor or registered civil engineer.

(2) Any subordinate to a land surveyor or civil engineer licensed or registered as required by the laws of this state insofar as he or she acts as a subordinate.

(c) Any officer or employee of an electric, gas, or telephone corporation, as defined in Sections 218, 222, and 234, respectively, of the Public Utilities Code, with annual revenues of twenty-five million dollars ($25,000,000) or more, whenever he or she prepares a legal description of an easement for utility distribution lines and service facilities, provided the following conditions are met:

(1) Each description identifies the corporation that prepared the description and states that it was prepared pursuant to this exemption.

(2) Each corporation has in its employ, or on contract, an individual authorized to practice land surveying who shall be responsible for establishing criteria for determining the

qualifications of technical specialists preparing those legal descriptions, specifying the format and information to be shown on maps or documents containing those descriptions, and capable of answering questions regarding the preparation of those descriptions.

(d) Any state, county, city, or city and county public safety employee investigating any crime or infraction for the purpose of determining or prosecuting a crime or infraction. This exemption shall not permit a public safety employee to offer or perform land surveying as defined in Section 8726 for any purpose other than determining or prosecuting a crime or infraction.

CHAPTER 126

An act to amend Sections 130100, 130105, 130110, 130140, and 130155 of, and to amend the heading of Division 108 (commencing with Section 130100) of, the Health and Safety Code, and to amend Sections 30131, 30131.3, and 30131.4 of, and to amend the heading of Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to child development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 14, 1999. Filed with Secretary of State July 14, 1999.]

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

SECTION 1. The heading of Division 108 (commencing with Section 130100) of the Health and Safety Code is amended to read:

DIVISION 108. CALIFORNIA CHILDREN AND FAMILIES PROGRAM

SEC. 2. Section 130100 of the Health and Safety Code is amended to read:

130100. There is hereby created a program in the state for the purposes of promoting, supporting, and improving the early development of children from the prenatal stage to five years of age. These purposes shall be accomplished through the establishment, institution, and coordination of appropriate standards, resources, and integrated and comprehensive programs emphasizing community awareness, education, nurturing, child care, social services, health care, and research.

(a) It is the intent of this act to facilitate the creation and implementation of an integrated, comprehensive, and collaborative system of information and services to enhance optimal early childhood development. This system should function as a network

that promotes accessibility to all information and services from any entry point into the system. It is further the intent of this act to emphasize local decisionmaking, to provide for greater local flexibility in designing delivery systems, and to eliminate duplicate administrative systems.

(b) The programs authorized by this act shall be administered by the California Children and Families Commission and by county children and families commissions. In administering this act, the state and county commissions shall use outcome-based accountability to determine future expenditures.

(c) This division shall be known and may be cited as the "California Children and Families Act of 1998."

SEC. 3. Section 130105 of the Health and Safety Code is amended to read:

130105. The California Children and Families Trust Fund is hereby created in the State Treasury.

(a) The California Children and Families Trust Fund shall consist of moneys collected pursuant to the taxes imposed by Section 30131.2 of the Revenue and Taxation Code.

(b) All costs to implement this act shall be paid from moneys deposited in the California Children and Families Trust Fund.

(c) The State Board of Equalization shall determine within one year of the passage of this act the effect that additional taxes imposed on cigarettes and tobacco products by this act has on the consumption of cigarettes and tobacco products in this state. To the extent that a decrease in consumption is determined by the State Board of Equalization to be the direct result of additional taxes imposed by this act, the State Board of Equalization shall determine the fiscal effect the decrease in consumption has on the funding of any Proposition 99 (the Tobacco Tax and Health Protection Act of 1988) state health-related education or research programs in effect as of November 1, 1998, and the Breast Cancer Fund programs that are funded by excise taxes on cigarettes and tobacco products. Funds shall be transferred from the California Children and Families Trust Fund to those affected programs as necessary to offset the revenue decrease directly resulting from the imposition of additional taxes by this act. Such reimbursements shall occur, and at such times, as determined necessary to further the intent of this subdivision.

(d) Moneys shall be allocated and appropriated from the California Children and Families Trust Fund as follows:

(1) Twenty percent shall be allocated and appropriated to separate accounts of the state commission for expenditure according to the following formula:

(A) Six percent shall be deposited in a Mass Media Communications Account for expenditures for communications to the general public utilizing television, radio, newspapers, and other mass media on subjects relating to and furthering the goals and purposes of this act, including, but not limited to, methods of

nurturing and parenting that encourage proper childhood development, the informed selection of child care, information regarding health and social services, the prevention of tobacco, alcohol, and drug use by pregnant women, and the detrimental effects of secondhand smoke on early childhood development.

(B) Five percent shall be deposited in an Education Account for expenditures for programs relating to education, including, but not limited to, the development of educational materials, professional and parental education and training, and technical support for county commissions in the areas described in subparagraph (A) of paragraph (1) of subdivision (b) of Section 130125.

(C) Three percent shall be deposited in a Child Care Account for expenditures for programs relating to child care, including, but not limited to, the education and training of child care providers, the development of educational materials and guidelines for child care workers, and other areas described in subparagraph (B) of paragraph (1) of subdivision (b) of Section 130125.

(D) Three percent shall be deposited in a Research and Development Account for expenditures for the research and development of best practices and standards for all programs and services relating to early childhood development established pursuant to this act, and for the assessment and quality evaluation of such programs and services.

(E) One percent shall be deposited in an Administration Account for expenditures for the administrative functions of the state commission.

(F) Two percent shall be deposited in an Unallocated Account for expenditure by the state commission for any of the purposes of this act described in Section 130100 provided that none of these moneys shall be expended for the administrative functions of the state commission.

(G) In the event that, for whatever reason, the expenditure of any moneys allocated and appropriated for the purposes specified in subparagraphs (A) to (F), inclusive, is enjoined by a final judgment of a court of competent jurisdiction, then those moneys shall be available for expenditure by the state commission for mass media communication emphasizing the need to eliminate smoking and other tobacco use by pregnant women, the need to eliminate smoking and other tobacco use by persons under 18 years of age, and the need to eliminate exposure to secondhand smoke.

(H) Any moneys allocated and appropriated to any of the accounts described in subparagraphs (A) to (F), inclusive, that are not encumbered or expended within any applicable period prescribed by law shall (together with the accrued interest on the amount) revert to and remain in the same account for the next fiscal period.

(2) Eighty percent shall be allocated and appropriated to county commissions in accordance with Section 130140.

(A) The moneys allocated and appropriated to county commissions shall be deposited in each local Children and Families Trust Fund administered by each county commission, and shall be expended only for the purposes authorized by this act and in accordance with the county strategic plan approved by each county commission.

(B) Any moneys allocated and appropriated to any of the county commissions that are not encumbered or expended within any applicable period prescribed by law shall (together with the accrued interest on the amount) revert to and remain in the same local Children and Families Trust Fund for the next fiscal period under the same conditions as set forth in subparagraph (A).

(e) All grants, gifts, or bequests of money made to or for the benefit of the state commission from public or private sources to be used for early childhood development programs shall be deposited in the California Children and Families Trust Fund and expended for the specific purpose for which the grant, gift, or bequest was made. The amount of any such grant, gift, or bequest shall not be considered in computing the amount allocated and appropriated to the state commission pursuant to paragraph (1) of subdivision (d).

(f) All grants, gifts, or bequests of money made to or for the benefit of any county commission from public or private sources to be used for early childhood development programs shall be deposited in the local Children and Families Trust Fund and expended for the specific purpose for which the grant, gift, or bequest was made. The amount of any such grant, gift, or bequest shall not be considered in computing the amount allocated and appropriated to the county commissions pursuant to paragraph (2) of subdivision (d).

SEC. 4. Section 130110 of the Health and Safety Code is amended to read:

130110. There is hereby established a California Children and Families Commission composed of seven voting members and two ex officio members.

(a) The voting members shall be selected, pursuant to Section 130115, from persons with knowledge, experience, and expertise in early child development, child care, education, social services, public health, the prevention and treatment of tobacco and other substance abuse, behavioral health, and medicine (including, but not limited to, representatives of statewide medical and pediatric associations or societies), upon consultation with public and private sector associations, organizations, and conferences composed of professionals in these fields.

(b) The Secretary of the California Health and Human Services Agency and the Secretary for Education, or their designees, shall serve as ex officio nonvoting members of the state commission.

SEC. 5. Section 130140 of the Health and Safety Code is amended to read:

130140. Any county or counties developing, adopting, promoting, and implementing local early childhood development programs consistent with the goals and objectives of this act shall receive moneys pursuant to paragraph (2) of subdivision (d) of Section 130105 in accordance with the following provisions:

(a) For the period between January 1, 1999 and June 30, 2000, county commissions shall receive the portion of the total moneys available to all county commissions equal to the percentage of the number of births recorded in the relevant county (for the most recent reporting period) in proportion to the entire number of births recorded in California (for the same period), provided that each of the following requirements has first been satisfied:

(1) The county's board of supervisors has adopted an ordinance containing the following minimum provisions:

(A) The establishment of a county children and families commission. The county commission shall be appointed by the board of supervisors and shall consist of at least five but not more than nine members.

(i) Two members of the county commission shall be from among the county health officer and persons responsible for management of the following county functions: children's services, public health services, behavioral health services, social services, and tobacco and other substance abuse prevention and treatment services.

(ii) One member of the county commission shall be a member of the board of supervisors.

(iii) The remaining members of the county commission shall be from among the persons described in clause (i) and persons from the following categories: recipients of project services included in the county strategic plan; educators specializing in early childhood development; representatives of a local child care resource or referral agency, or a local child care coordinating group; representatives of a local organization for prevention or early intervention for families at risk; representatives of community-based organizations that have the goal of promoting nurturing and early childhood development; representatives of local school districts; and representatives of local medical, pediatric, or obstetric associations or societies.

(B) The manner of appointment, selection, or removal of members of the county commission, the duration and number of terms county commission members shall serve, and any other matters that the board of supervisors deems necessary or convenient for the conduct of the county commission's activities, provided that members of the county commission shall not be compensated for their services, except they shall be paid reasonable per diem and reimbursement of reasonable expenses for attending meetings and discharging other official responsibilities as authorized by the county commission.

(C) The requirement that the county commission adopt an adequate and complete county strategic plan for the support and improvement of early childhood development within the county.

(i) The county strategic plan shall be consistent with, and in furtherance of the purposes of, this act and any guidelines adopted by the state commission pursuant to subdivision (b) of Section 130125 that are in effect at the time the plan is adopted.

(ii) The county strategic plan shall, at a minimum, include the following: a description of the goals and objectives proposed to be attained; a description of the programs, services, and projects proposed to be provided, sponsored, or facilitated; and a description of how measurable outcomes of such programs, services, and projects will be determined by the county commission using appropriate reliable indicators. No county strategic plan shall be deemed adequate or complete until and unless the plan describes how programs, services, and projects relating to early childhood development within the county will be integrated into a consumer-oriented and easily accessible system.

(iii) The county commission shall, on at least an annual basis, be required to periodically review its county strategic plan and to revise the plan as may be necessary or appropriate.

(D) The requirement that the county commission conduct at least one public hearing on its proposed county strategic plan before the plan is adopted.

(E) The requirement that the county commission conduct at least one public hearing on its periodic review of the county strategic plan before any revisions to the plan are adopted.

(F) The requirement that the county commission submit its adopted county strategic plan, and any subsequent revisions thereto, to the state commission.

(G) The requirement that the county commission prepare and adopt an annual audit and report pursuant to Section 130150. The county commission shall conduct at least one public hearing prior to adopting any annual audit and report.

(H) The requirement that the county commission conduct at least one public hearing on each annual report by the state commission prepared pursuant to subdivision (b) of Section 130150.

(I) Two or more counties may form a joint county commission, adopt a joint county strategic plan, or implement joint programs, services, or projects.

(2) The county's board of supervisors has established a county commission and has appointed a majority of its members.

(3) The county has established a local Children and Families Trust Fund pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 130105.

(b) Notwithstanding any provision of this act to the contrary, no moneys made available to county commissions under subdivision (a) shall be expended to provide, sponsor, or facilitate any programs,

services, or projects for early childhood development until and unless the county commission has first adopted an adequate and complete county strategic plan that contains the provisions required by clause (ii) of subparagraph (C) of paragraph (1) of subdivision (a).

(c) In the event that any county elects not to participate in the California Children and Families Program, the moneys remaining in the California Children and Families Trust Fund shall be reallocated and reappropriated to participating counties in the following fiscal year.

(d) For the fiscal year commencing on July 1, 2000, and for each fiscal year thereafter, county commissions shall receive the portion of the total moneys available to all county commissions equal to the percentage of the number of births recorded in the relevant county (for the most recent reporting period) in proportion to the number of births recorded in all of the counties participating in the California Children and Families Program (for the same period), provided that each of the following requirements has first been satisfied:

(1) The county commission has, after the required public hearings, adopted an adequate and complete county strategic plan conforming to the requirements of subparagraph (C) of paragraph (1) of subdivision (a), and has submitted the plan to the state commission.

(2) The county commission has conducted the required public hearings, and has prepared and submitted all audits and reports required pursuant to Section 130150.

(3) The county commission has conducted the required public hearings on the state commission annual reports prepared pursuant to subdivision (b) of Section 130150.

(e) In the event that any county elects not to continue participation in the California Children and Families Program, any unencumbered and unexpended moneys remaining in the local Children and Families Trust Fund shall be returned to the California Children and Families Trust Fund for reallocation and reappropriation to participating counties in the following fiscal year.

(f) For purposes of this section, ''relevant county'' means the county in which the mother of the child whose birth is being recorded resides.

SEC. 6. Section 130155 of the Health and Safety Code is amended to read:

130155. The following definitions apply for purposes of this act:

(a) ''Act'' means the California Children and Families Act of 1998.

(b) ''County commission'' means each county children and families commission established in accordance with Section 130140.

(c) ''County strategic plan'' means the plan adopted by each county children and families commission and submitted to the California Children and Families Commission pursuant to Section 130140.

(d) "State commission" means the California Children and Families Commission established in accordance with Section 130110.

SEC. 7. The heading of Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code is amended to read:

Article 3.

California Children and Families Trust Fund Account

SEC. 8. Section 30131 of the Revenue and Taxation Code is amended to read:

30131. Notwithstanding Section 30122, the California Children and Families Trust Fund is hereby created in the State Treasury for the exclusive purpose of funding those provisions of the California Children and Families Act of 1998 that are set forth in Division 108 (commencing with Section 130100) of the Health and Safety Code.

SEC. 9. Section 30131.3 of the Revenue and Taxation Code is amended to read:

30131.3. Except for payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the taxes imposed by Section 30131.2, and transfers of funds in accordance with subdivision (c) of Section 130105 of the Health and Safety Code, all moneys raised pursuant to the taxes imposed by Section 30131.2 shall be deposited in the California Children and Families Trust Fund and are continuously appropriated for the exclusive purpose of the California Children and Families Program established by Division 108 (commencing with Section 130100) of the Health and Safety Code.

SEC. 10. Section 30131.4 of the Revenue and Taxation Code is amended to read:

30131.4. All moneys raised pursuant to taxes imposed by Section 30131.2 shall be appropriated and expended only for the purposes expressed in the California Children and Families Act, and shall be used only to supplement existing levels of service and not to fund existing levels of service. No moneys in the California Children and Families Trust Fund shall be used to supplant state or local General Fund money for any purpose.

SEC. 11. The Legislature finds and declares that this act furthers the California Children and Families First Act of 1998 enacted by Proposition 10 at the November 3, 1998, general election, and is consistent with its purposes.

SEC. 12. 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 vital funding for the California Children and Families Program is distributed to the appropriate counties at the earliest possible time for expenditure for the purposes of the program, it is necessary that this act take effect immediately.

CHAPTER 127

An act to amend Section 19618 of, and to add Section 19618.1 to, the Business and Professions Code, relating to horse racing.

[Approved by Governor July 14, 1999. Filed with Secretary of State July 14, 1999.]

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

SECTION 1. Section 19618 of the Business and Professions Code is amended to read:

19618. (a) Except as provided in Article 9.2 (commencing with Section 19605), no person licensed under this chapter to conduct a racing meeting shall pay or distribute to, or on behalf of, any horse owner, any agent, or person or organization representing any horse owner or owners, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in this chapter.

(b) Except as provided in Article 9.2 (commencing with Section 19605), no horse owner, any agent, or person or organization representing any horse owner or owners, shall receive, solicit, or obtain from any person licensed under this chapter to conduct a race meeting, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in this chapter.

(c) No plaque, cup, tray, ribbon, trophy, or similar award given in recognition of achievement or special event is deemed to be consideration for the purpose of subdivisions (a) and (b).

(d) Subdivisions (a) and (b) do not apply to any payment by an association in connection with any match race or special racing event.

(e) Notwithstanding subdivision (a) or (b), or any other provision of law, the horsemen's organization that represents the horsemen participating in a racing meeting and a licensed racing association may enter into an agreement which provides for the division of, and sharing by the organization and the association of, the interest earned on the association's paymaster accounts during racing meetings conducted prior to, during, or subsequent to, 1990, if both of the following conditions are satisfied:

(1) The agreement is filed with the board.

(2) The share of earned interest allocated to the horsemen's organization is used exclusively for the benefit of horsemen, including, among other purposes, purses.

(f) Notwithstanding subdivision (a) or (b), or any other provision of law, the horsemen's organization that represents the horsemen participating in a racing meeting and a licensed racing association may enter into an agreement that provides for the supplementing of purses due to the impact, if any, of activities regulated pursuant to the provisions of Chapter 5 (commencing with Section 19800) that are conducted on the association's property during a race meeting, if both of the following conditions are satisfied:

(1) The agreement is approved by the board.

(2) Any sum agreed to pursuant to this subdivision is used exclusively to supplement purses.

SEC. 2. Section 19618.1 is added to the Business and Professions Code, to read:

19618.1. Subdivisions (a) and (b) of Section 19618 shall not apply to any payment by a licensed harness racing association in the northern zone, or by any fair, in connection with promotional contests or sponsorship contributions.

CHAPTER 128

An act to amend Sections 12071, 12072, 12076, and 12077 of the Penal Code, relating to firearms.

[Approved by Governor July 19, 1999. Filed with Secretary of State July 19, 1999.]

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

SECTION 1. 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."

(E) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD."

(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. 2. 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.

(9) (A) No person shall make an application to purchase more than one pistol, revolver, or other firearm capable of being concealed upon the person within any 30-day period.

(B) Subparagraph (A) shall not apply to any of the following:

(i) Any law enforcement agency.

(ii) Any agency duly authorized to perform law enforcement duties.

(iii) Any state or local correctional facility.

(iv) Any private security company licensed to do business in California.

(v) Any person who is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and does carry a firearm during the course and scope of his or her employment as a peace officer.

(vi) Any motion picture, television, or video production company or entertainment or theatrical company whose production by its nature involves the use of a firearm.

(vii) Any person who may, pursuant to Section 12078, claim an exemption from the waiting period set forth in subdivision (c) of this section.

(viii) Any transaction conducted through a licensed dealer pursuant to Section 12082.

(ix) Any transaction conducted through a law enforcement agency pursuant to Section 12084.

(x) Any 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 and who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071.

(xi) The exchange of a pistol, revolver, or other firearm capable of being concealed upon the person where the dealer purchased that firearm from the person seeking the exchange within the 30-day period immediately preceding the date of exchange or replacement.

(xii) The replacement of a pistol, revolver, or other firearm capable of being concealed upon the person when the person's pistol, revolver, or other firearm capable of being concealed upon the person was lost or stolen, and the person reported that firearm lost or stolen prior to the completion of the application to purchase to any local law enforcement agency of the city, county, or city and county in which he or she resides.

(xiii) The return of any pistol, revolver, or other firearm capable of being concealed upon the person to its owner.

(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.

(6) No pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person and that the previous application to purchase involved none of the entities specified in subparagraph (B) of paragraph (9) of subdivision (a).

(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), (3), or (5), 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 the provisions, other than paragraph (9) of subdivision (a), of 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), (5), or (6) 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.

(5) (A) A first violation of paragraph (9) of subdivision (a) is an infraction punishable by a fine of fifty dollars ($50).

(B) A second violation of paragraph (9) of subdivision (a) is an infraction punishable by a fine of one hundred dollars ($100).

(C) A third or subsequent violation of paragraph (9) of subdivision (a) is a misdemeanor.

(D) For purposes of this paragraph each application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (9) of subdivision (a) shall be deemed a separate offense.

SEC. 3. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the department shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of

firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephone transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 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, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 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.

SEC. 4. 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, any information required to determine whether or not paragraph (6) of subdivision (c) of Section 12072 applies, 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. 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.

CHAPTER 129

An act to amend Sections 245, 12001, 12020, 12022, 12022.5, 12280, 12285, and 12289 of, and to add Sections 12079 and 12276.1 to, the Penal Code, relating to firearms.

[Approved by Governor July 19, 1999. Filed with Secretary of State July 19, 1999.]

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

SECTION 1. Section 245 of the Penal Code is amended to read:

245. (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars ($10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) (1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or

her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Any person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 2. 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 that has a barrel less than 16 inches in length. These terms also include any device that 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 that 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 that 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 or 12276.1.

(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. 3. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition.

(4) Carries concealed upon his or her person any dirk or dagger.

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.29) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

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

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's

office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of

these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio,

memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(19) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(20) The sale to, lending to, transfer to, purchase by, receipt of, or importation into this state of, a large capacity magazine by a sworn

peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(21) The sale or purchase of any large-capacity magazine to or by a person licensed pursuant to Section 12071.

(22) The loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(A) The person being loaned the large-capacity magazine is not prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(B) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

(23) The importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the large-capacity magazine previously lawfully possessed in the state.

(24) The lending or giving of any large-capacity magazine to a person licensed pursuant to Section 12071, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(25) The return to its owner of any large-capacity magazine by a person specified in paragraph (24).

(26) The importation into this state of, or sale of, any large-capacity magazine by a person who has been issued a permit to engage in those activities pursuant to Section 12079, when those activities are in accordance with the terms and conditions of that permit.

(27) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine, to or by entities that operate armored vehicle businesses pursuant to the laws of this state.

(28) The lending of large-capacity magazines by the entities specified in paragraph (27) to their authorized employees, while in the course and scope of their employment for purposes that pertain to the entity's armored vehicle business.

(29) The return of those large-capacity magazines to those entities specified in paragraph (27) by those employees specified in paragraph (28).

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one

inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least $2^1/_2$ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the

component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(25) As used in this section, "large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds nor shall it include any .22 caliber tube ammunition feeding device.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 3.5. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an

explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition.

(4) Carries concealed upon his or her person any dirk or dagger.

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.29) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

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

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by peace officer members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties and the peace officer has completed a training course in the use of these weapons certified by the Commission on Peace Officer Standards and Training.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition

and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making

that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(19) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(20) The sale to, lending to, transfer to, purchase by, receipt of, or importation into this state of, a large capacity magazine by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(21) The sale or purchase of any large-capacity magazine to or by a person licensed pursuant to Section 12071.

(22) The loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(A) The person being loaned the large-capacity magazine is not prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(B) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited and the person who lends the large-capacity

magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

(23) The importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the large-capacity magazine previously lawfully possessed in the state.

(24) The lending or giving of any large-capacity magazine to a person licensed pursuant to Section 12071, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(25) The return to its owner of any large-capacity magazine by a person specified in paragraph (24).

(26) The importation into this state of, or sale of, any large-capacity magazine by a person who has been issued a permit to engage in those activities pursuant to Section 12079, when those activities are in accordance with the terms and conditions of that permit.

(27) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine, to or by entities that operate armored vehicle businesses pursuant to the laws of this state.

(28) The lending of large-capacity magazines by the entities specified in paragraph (27) to their authorized employees, while in the course and scope of their employment for purposes that pertain to the entity's armored vehicle business.

(29) The return of those large-capacity magazines to those entities specified in paragraph (27) by those employees specified in paragraph (28).

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least $2^1/_2$ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(25) As used in this section, "large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds nor shall it include any .22 caliber tube ammunition feeding device.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 4. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless the arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, the additional term described in this subdivision shall be three years whether or not the arming is an element of the offense of which he or she was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with an assault weapon or machinegun whether or not the person is personally armed with an assault weapon or machinegun.

(b) (1) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and

consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for that offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (c), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 5. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) (1) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the

punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of the offense of which he or she was convicted.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be 4, 5, or 10 years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245, or murder if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted

commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 6. Section 12079 is added to the Penal Code, to read:

12079. (a) Upon a showing that good cause exists, the Department of Justice may issue permits for the possession, transportation, or sale between a person licensed pursuant to Section 12071 and an out-of-state client, of large capacity magazines.

(b) For purposes of this section, "large capacity magazine" shall have the same meaning as that set forth in paragraph (25) of subdivision (c) of Section 12020.

SEC. 7. Section 12276.1 is added to the Penal Code, to read:

12276.1. (a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following:

(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

(b) "Assault weapon" does not include any antique firearm.

(c) The following definitions shall apply under this section:

(1) "Magazine" shall mean any ammunition feeding device.

(2) "Capacity to accept more than 10 rounds" shall mean capable of accommodating more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(3) "Antique firearm" means any firearm manufactured prior to January 1, 1899.

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

SEC. 8. Section 12280 of the Penal Code is amended to read:

12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, and in subdivisions (c) and (d), any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year. However, if the person presents proof that he or she lawfully possessed the assault weapon prior to June 1, 1989, or prior to the date it was specified as an assault weapon, and has since either registered the firearm and any other lawfully obtained firearm specified by Section 12276 or 12276.5 pursuant to Section 12285 or relinquished them pursuant to Section 12288, a first-time violation of this subdivision shall be an infraction punishable by a fine of up to five hundred dollars ($500), but not less than three hundred fifty dollars ($350), if the person has otherwise possessed the firearm in compliance with subdivision (c) of Section 12285. In these cases, the firearm shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(c) A first-time violation of subdivision (b) shall be an infraction punishable by a fine of up to five hundred dollars ($500), if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(2) The person is not found in possession of a firearm specified as an assault weapon pursuant to Section 12276 or Section 12276.5.

(3) The person has not previously been convicted of violating this section.

(4) The person was found to be in possession of the assault weapons within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(5) The person has since registered the firearms and any other lawfully obtained firearms defined by Section 12276.1, pursuant to Section 12285, except as provided for by this section, or relinquished them pursuant to Section 12288.

(d) Firearms seized pursuant to subdivision (c) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(e) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(f) Subdivisions (a) and (b) shall not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Youth and Adult Corrections Agency, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States for use in the discharge of their official duties.

(g) Subdivision (b) shall not prohibit the possession or use of assault weapons by sworn peace officer members of those agencies specified in subdivision (f) for law enforcement purposes, whether on or off duty.

(h) Subdivisions (a) and (b) shall not prohibit the sale or transfer of assault weapons by an entity specified in subdivision (f) to a person, upon retirement, who retired as a sworn officer from that entity.

(i) Subdivision (b) shall not apply to the possession of an assault weapon by a retired peace officer who received that assault weapon pursuant to subdivision (h).

(j) Subdivision (b) shall not apply to the possession of an assault weapon, as defined in Section 12276, by any person during the 1990 calendar year, during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault

weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon described in paragraph (1) prior to June 1, 1989, if the weapon is specified as an assault weapon pursuant to Section 12276, or prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(k) Subdivisions (a) and (b) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons for sale to the following:

(1) Exempt entities listed in subdivision (f).

(2) Entities and persons who have been issued permits pursuant to Section 12286.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal military and law enforcement agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(*l*) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (g) or (i) which is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(m) Subdivision (b) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (g) or (i), if the assault weapon is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(n) Subdivision (a) shall not apply to:

(1) A person who lawfully possesses and has registered an assault weapon pursuant to this chapter who lends that assault weapon to another if all the following apply:

(A) The person to whom the assault weapon is lent is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person to whom the assault weapon is lent remains in the presence of the registered possessor of the assault weapon.

(C) The assault weapon is possessed at any of the following locations:

(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon to the registered possessor which is lent by the same pursuant to paragraph (1).

(o) Subdivision (b) shall not apply to the possession of an assault weapon by a person to whom an assault weapon is lent pursuant to subdivision (n).

(p) Subdivisions (a) and (b) shall not apply to the possession and importation of an assault weapon into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon.

(2) The competition or match is conducted on the premises of one of the following:

(i) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

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

(1) A person acting in accordance with Section 12286.

(2) A person who has a permit to possess an assault weapon issued pursuant to Section 12286 when he or she is acting in accordance with Section 12285 or 12286.

(r) Subdivisions (a) and (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286 or 12290.

(s) Subdivision (b) shall not apply to the registered owner of an assault weapon possessing that firearm in accordance with subdivision (c) of Section 12285.

(t) Subdivision (a) shall not apply to the importation into this state of an assault weapon by the registered owner of that assault weapon, if it is in accordance with the provisions of subdivision (c) of Section 12285.

(u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (b) of that section.

SEC. 9. Section 12285 of the Penal Code is amended to read:

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, and any person who lawfully possessed an assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5 shall register the firearm within 90 days with the Department of Justice pursuant to those procedures that the department may establish. Except as provided in subdivision (a) of Section 12280, any person who lawfully possessed an assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1, and which was not specified as an assault weapon under Section 12276 or 12276.5, shall register the firearm within one year of the effective date of Section 12276.1, with the department pursuant to those procedures that the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and any other information that the department may deem appropriate. The department may charge a fee for registration of up to twenty dollars ($20) per person but not to exceed the actual processing costs of the department. 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 adjustment for the department's budget or as otherwise increased through the Budget Act.

(b) (1) Except as provided in paragraph (2), no assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer, as defined in subdivision (c) of Section 12290, or as provided in Section 12288. Any person who (A) obtains title to an assault weapon registered under this section or that was possessed pursuant to subdivision (g) or (i) of Section 12280 by bequest or intestate succession, or (B) lawfully possessed a firearm subsequently

declared to be an assault weapon pursuant to Section 12276.5, or subsequently defined as an assault weapon pursuant to Section 12276.1, shall, within 90 days, render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm that was subsequently declared to be an assault weapon pursuant to Section 12276.5 may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(2) A person moving into this state, otherwise in lawful possession of an assault weapon, shall do one of the following:

(A) Prior to bringing the assault weapon into this state, that person shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

(B) The person shall cause the assault weapon to be delivered to a licensed gun dealer, as defined in subdivision (c) of Section 12290, in this state in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. If the person obtains a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, the dealer shall redeliver that assault weapon to the person. If the licensed gun dealer, as defined in subdivision (c) of Section 12290, is prohibited from delivering the assault weapon to a person pursuant to this paragraph, the dealer shall possess or dispose of the assault weapon as allowed by this chapter.

(c) A person who has registered an assault weapon under this section may possess it only under any of the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(3) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.

(5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(6) While on publicly owned land if the possession and use of a firearm described in Section 12276 or 12276.1 is specifically permitted by the managing agency of the land.

(7) While transporting the assault weapon between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.

(d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.

(f) For 90 days following January 1, 1992, a forgiveness period shall exist to allow persons specified in subdivision (b) of Section 12280 to register with the Department of Justice assault weapons that they lawfully possessed prior to June 1, 1989.

(g) Any person who registered a firearm as an assault weapon pursuant to the provisions of law in effect prior to January 1, 2000, where the assault weapon is thereafter defined as an assault weapon pursuant to Section 12276.1, shall be deemed to have registered the weapon for purposes of this chapter and shall not be required to reregister the weapon pursuant to this section.

(h) Any person who registers his or her assault weapon during the 90-day forgiveness period described in subdivision (f), and any person whose registration form was received by the Department of Justice after January 1, 1991, and who was issued a temporary registration prior to the end of the forgiveness period, shall not be charged with a violation of subdivision (b) of Section 12280, if law enforcement becomes aware of that violation only as a result of the registration of the assault weapon. This subdivision shall have no effect upon persons charged with a violation of subdivision (b) of Section 12280 of the Penal Code prior to January 1, 1992, provided that law enforcement was aware of the violation before the weapon was registered.

SEC. 10. Section 12287 of the Penal Code is amended to read:

12287. (a) The Department of Justice may, upon a finding of good cause, issue permits for the manufacture of assault weapons to federally licensed manufacturers of firearms for the sale to, purchase by, or possession of assault weapons by, any of the following:

(1) The agencies listed in subdivision (f) of Section 12280.

(2) Entities and persons who have been issued permits pursuant to Section 12286.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal law enforcement and military agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(b) Application for the permits, the keeping and inspection thereof, and the revocation of permits shall be undertaken in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

SEC. 11. Section 12289 of the Penal Code is amended to read:

12289. (a) The Department of Justice shall conduct a public education and notification program regarding the registration of assault weapons and the definition of the weapons set forth in Section 12276.1. The public education and notification program shall include outreach to local law enforcement agencies and utilization of public service announcements in a variety of media approaches, to ensure maximum publicity of the limited forgiveness period of the registration requirement specified in subdivision (f) of Section 12285 and the consequences of nonregistration. The department shall develop posters describing gunowners' responsibilities under this chapter which shall be posted in a conspicuous place in every licensed gun store in the state during the forgiveness period.

(b) Any costs incurred by the Department of Justice to implement this section which cannot be absorbed by the department shall be funded from the Dealers' Record of Sale Special Account, as set forth in subdivision (d) of Section 12076, upon appropriation by the Legislature.

SEC. 12. It was the original intent of the Legislature in enacting Chapter 19 of the Statutes of 1989 to ban all assault weapons, regardless of their name, model number, or manufacture. It is the purpose of this act to effectively achieve the Legislature's intent to prohibit all assault weapons.

SEC. 13. If any phrase, clause, sentence, section, or provision of this act or application thereof is held invalid as to any person or circumstance, such invalidity shall not affect any other phrase, clause, sentence, section, provision, or application of this act, that can be given effect without the invalid phrase, clause, sentence, section, provision, or application and to this end the provisions of the act are declared to be severable.

SEC. 14. Section 3.5 of this bill incorporates amendments to Section 12020 of the Penal Code proposed by this bill and SB 359. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12020 of the Penal Code, and (3) this bill is enacted after SB 359, in which case Section 12020 of the Penal Code, as amended by SB 359, 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. 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.

CHAPTER 130

An act to amend Section 1561.1 of the Financial Code, relating to investments.

[Approved by Governor July 19, 1999. Filed with Secretary of State July 20, 1999.]

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

SECTION 1. Section 1561.1 of the Financial Code is amended to read:

1561.1. (a) As used in this section:

(1) "Fund" means any investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), as amended from time to time.

(2) "Trust" means any court trust or private trust.

(3) "Trust Law" means Division 9 (commencing with Section 15000) of the Probate Code.

(b) Within the standards established by trust law, including, but not limited to, Division 9 (commencing with Section 15000) of the Probate Code, a trust company acting in any capacity under a trust may, in the exercise of its investment discretion unless the trust instrument provides expressly to the contrary, invest and reinvest in the securities of or other interests in any fund to which the trust company or its affiliate is providing services including, but not limited to services as an investment adviser, sponsor, distributor, custodian, agent, registrar, administrator, servicer, or manager, and for which the trust company or its affiliate receives compensation.

(c) Within 30 days before or after the initial investment under the exercise of discretionary powers authorized by subdivision (b), the trust company, acting in any capacity under a trust, shall furnish written notice of the exercise of the discretionary powers and a copy of the prospectus relating to the securities to all persons to whom the trust company is required to render statements of account pursuant to applicable provisions of the Trust Law or to whom the trust company regularly provides a statement of account unless specifically waived in writing.

(d) With respect to any trust so invested, the trust company shall disclose to all persons identified in subdivision (c), at least annually by prospectus, statement of account, or other written notice, a brief description of the fees or rates charged by the trust company and its affiliates for its services as investment adviser or investment manager to the fund.

(e) In connection with an investment or reinvestment authorized by subdivision (b), the portion of compensation a trust company receives from the trust reasonably attributable to investment advisory or investment management services to the trust shall be reduced (but not below zero) by an amount equal to compensation that is received by the trust company or its affiliates for providing investment advisory or investment management services to the fund for the portion of the trust invested in the fund.

CHAPTER 131

An act relating to the payment of claims against the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 19, 1999. Filed with Secretary of State July 20, 1999.]

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

SECTION 1. (a) The sum of one million six hundred three thousand seven hundred sixty-nine dollars and forty-five cents ($1,603,769.45) is hereby appropriated from the various funds, as specified in subdivision (b), to the Executive Officer of the State Board of Control to pay claims accepted by the State Board of Control in accordance with the schedule set forth in subdivision (b). Those payments shall be made from the funds and accounts identified in that schedule. In the case of Budget Act item schedules identified in the schedule set forth in subdivision (b), those payments shall be made from the funds appropriated in the item schedule.

(b) Pursuant to subdivision (a), claims accepted by the State Board of Control shall be paid in accordance with the following schedule:

Total for Fund: Bank and Corporation Tax Fund	$30,889.96
Total for Fund: Beverage Container Recycling Fund	$139,303.29

Total for Fund: Delta Dental Refund Account	$3,374.19
Total for Fund: Employment Development Contingent Fund	$2,349.09
Total for Fund: General Fund	$621,569.74
Total for Fund: Health Care Deposit Fund	$9,685.74
Total for Fund: Inmate Welfare Fund	$54,034.30
Total for Fund: Item 0250−001−0001, Budget Act of 1999	$139.00
Total for Fund: Item 1730−001−0001(a), Budget Act of 1999	$500.00
Total for Fund: Item 2240−001−0001(a), Budget Act of 1999	$500.00
Total for Fund: Item 2660−001−0042(b), Budget Act of 1999	$50,258.59
Total for Fund: Item 2660−001−0042, Budget Act of 1999	$22,518.16
Total for Fund: Item 2720−001−0044(a), Budget Act of 1999	$2,603.00
Total for Fund: Item 2740−001−0044(a), Budget Act of 1999	$409.00
Total for Fund: Item 2740−001−0064, Budget Act of 1999	$12.00
Total for Fund: Item 3600−001−0200(d), Budget Act of 1999	$9,799.00
Total for Fund: Item 3600−001−0200(g), Budget Act of 1999	$254.00
Total for Fund: Item 3600−001−0320, Budget Act of 1999	$16,671.75
Total for Fund: Item 3790−001−0392(a), Budget Act of 1999	$25,838.31
Total for Fund: Item 3860−001−0001(a), Budget Act of 1999	$1,110.00
Total for Fund: Item 4130−001−0632(b), Budget Act of 1999	$112.65
Total for Fund: Item 4200−101−0001(a), Budget Act of 1999	$27,408.00
Total for Fund: Item 4260−001−0001(1), Budget Act of 1999	$1,861.32

Total for Fund: Item 4260−001−0001(2), Budget Act of 1999	$10,795.21
Total for Fund: Item 4440−001−0001(a), Budget Act of 1999	$1,225.57
Total for Fund: Item 4440−011−0001(a), Budget Act of 1999	$3,400.29
Total for Fund: Item 4440−011−0001(b), Budget Act of 1999	$107.20
Total for Fund: Item 4700−001−0890(a), Budget Act of 1999	$2,199.38
Total for Fund: Item 5100−001−0870(b), Budget Act of 1999	$1,106.00
Total for Fund: Item 5100−001−0870(f), Budget Act of 1999	$47.41
Total for Fund: Item 5160−001−0001(a), Budget Act of 1999	$17,788.57
Total for Fund: Item 5160−001−0001(d), Budget Act of 1999	$280.00
Total for Fund: Item 5180−001−0001(a), Budget Act of 1999	$250.00
Total for Fund: Item 5180−001−0890, Budget Act of 1999	$2,475.71
Total for Fund: Item 5240−001−0001(a), Budget Act of 1999	$151,882.65
Total for Fund: Item 5460−001−0001(a), Budget Act of 1999	$4,515.61
Total for Fund: Item 6110−005−0001(3), Budget Act of 1999	$3,260.00
Total for Fund: Item 6360−001−0407(a), Budget Act of 1999	$100.00
Total for Fund: Item 8260−101−0001(b), Budget Act of 1999	$4,117.20
Total for Fund: Item 8350−001−0001(3), Budget Act of 1999	$50.82
Total for Fund: Item 8380−001−0001(f), Budget Act of 1999	$208.34
Total for Fund: Item 8700−001−0214, Budget Act of 1999	$2,406.19
Total for Fund: Item 9650−001−0001(b), Budget Act of 1999	$973.08

Total for Fund: Motor Vehicle Account, State Transportation Fund	$6,206.25
Total for Fund: Peace Officers Training Fund	$2,157.05
Total for Fund: Personal Income Tax Fund	$2,332.91
Total for Fund: Public Employees' Health Care Fund	$444.20
Total for Fund: Public Employees' Retirement Fund	$2,437.83
Total for Fund: California Residential Earthquake Recovery Fund	$154.24
Total for Fund: Retail Sales Tax Fund	$683.84
Total for Fund: Special Deposit Fund	$5.00
Total for Fund: Tax Relief and Refund Account	$48,174.69
Total for Fund: Transportation Fund, State Highway Account	$502.00
Total for Fund: Unclaimed Property Fund	$290,683.45
Total for Fund: Unemployment Administration Fund	$2,674.16
Total for Fund: Unemployment Compensation Disability Fund	$16,811.41
Total for Fund: Unemployment Fund	$1,635.10
Total for Fund: Vehicle Inspection and Repair Fund	$477.00

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to settle claims against the state and end hardship to claimants as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 132

An act to add Section 61601.18 to the Government Code, relating to community services districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 19, 1999. Filed with Secretary of State July 20, 1999.]

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

SECTION 1. Section 61601.18 is added to the Government Code, to read:

61601.18. (a) Notwithstanding Sections 61600 and 61601, whenever the Board of Directors of the Heritage Ranch Community Services District determines by resolution that it is feasible, economically sound, and in the public interest for the district to exercise its power for the purpose of acquiring, constructing, improving, upgrading, maintaining, or operating storage tanks and related facilities to provide petroleum to the district, its inhabitants, and visitors to the Heritage Ranch community, the board may adopt those additional purposes by resolution in the minutes, and the powers of the district may thereafter be exercised for those purposes.

(b) The authority granted by this section shall expire when a private person or entity is ready, willing, and able to acquire, construct, improve, upgrade, maintain, or operate storage tanks and related facilities to provide petroleum to the Heritage Ranch Community Services District, its inhabitants, and visitors to the community. At that time, the district shall diligently transfer any and all of its title, ownership, maintenance, control, and operation of those tanks and related facilities at a fair market value to that private person or entity.

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 alleviate the safety hazards and inconvenience to district residents who need to store gasoline in their garages because of the unavailability of gasoline in the district due to the expiration of the underground storage tank cleanup period on December 22, 1998, it is necessary that this act take effect immediately.

CHAPTER 133

An act to add Section 17076.11 to the Education Code, relating to school facilities.

[Approved by Governor July 19, 1999. Filed with Secretary of State July 20, 1999.]

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

SECTION 1. Section 17076.11 is added to the Education Code, to read:

17076.11. Any school district using funds allocated pursuant to this chapter for the construction or modernization of a school building,

shall have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises.

CHAPTER 134

An act to amend Sections 510, 554, 556, and 1182.1 of, to add Sections 500, 511, 512, 513, 514, 515, 516, 517, and 558 to, to repeal Section 1183.5 of, and to amend and repeal Sections 1182.2, 1182.3, 1182.9, and 1182.10 of, the Labor Code, relating to employment.

[Approved by Governor July 20, 1999. Filed with Secretary of State July 21, 1999.]

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

SECTION 1. This act shall be known and may be cited as the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999."

SEC. 2. The Legislature hereby finds and declares all of the following:

(a) The eight-hour workday is the mainstay of protection for California's working people, and has been for over 80 years.

(b) In 1911, California enacted the first daily overtime law setting the eight-hour daily standard, long before the federal government enacted overtime protections for workers.

(c) Ending daily overtime would result in a substantial pay cut for California workers who currently receive daily overtime.

(d) Numerous studies have linked long work hours to increased rates of accident and injury.

(e) Family life suffers when either or both parents are kept away from home for an extended period of time on a daily basis.

(f) In 1998 the Industrial Welfare Commission issued wage orders that deleted the requirement to pay premium wages after eight hours of work a day in five wage orders regulating eight million workers.

(g) Therefore, the Legislature affirms the importance of the eight-hour workday, declares that it should be protected, and reaffirms the state's unwavering commitment to upholding the eight-hour workday as a fundamental protection for working people.

SEC. 3. Section 500 is added to the Labor Code, to read:

500. For purposes of this chapter, the following terms shall have the following meanings:

(a) "Workday" and "day" mean any consecutive 24-hour period commencing at the same time each calendar day.

(b) "Workweek" and "week" mean any seven consecutive days, starting with the same calendar day each week. "Workweek" is a

fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods.

(c) "Alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period.

SEC. 4. Section 510 of the Labor Code is amended to read:

510. (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

(3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

SEC. 5. Section 511 is added to the Labor Code, to read:

511. (a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work

unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose.

(b) An affected employee working longer than eight hours but not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week. An overtime rate of compensation of no less than double the regular rate of pay of the employee shall be paid for any work in excess of 12 hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

(c) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(d) An employer shall make a reasonable effort to find a work schedule not to exceed eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule hours established as the result of that election. An employer shall be permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election. An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(e) The results of any election conducted pursuant to this section shall be reported by an employer to the Division of Labor Statistics and Research within 30 days after the results are final.

(f) Any type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees pursuant to this section. Any alternative workweek schedule that was adopted pursuant to Wage Order Numbers 1, 4, 5, 7, or 9 of the Industrial Welfare Commission is null and void, except for an alternative workweek providing for a regular schedule of no more than 10 hours' work in a workday that was adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to wage orders of the Industrial Welfare Commission in effect prior to 1998. This subdivision does not apply to exemptions authorized pursuant to Section 515.

(g) Notwithstanding subdivision (f), an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage Orders 4 and 5 in effect prior to 1998 that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation shall be valid until July 1, 2000. An employer in the health care industry shall make a reasonable effort to accommodate any employee in the health care industry who is unable to work the alternative schedule established as the result of a valid election held in accordance with provisions of Wage Orders 4 or 5 that were in effect prior to 1998.

(h) Notwithstanding subdivision (f), if an employee is voluntarily working an alternative workweek schedule providing for a regular work schedule of not more than 10 hours work in a workday as of July 1, 1999, an employee may continue to work that alternative workweek schedule without the entitlement of the payment of daily overtime compensation for the hours provided in that schedule if the employer approves a written request of the employee to work that schedule.

SEC. 6. Section 512 is added to the Labor Code, to read:

512. An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

SEC. 7. Section 513 is added to the Labor Code, to read:

513. If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of the overtime requirements specified in Section 510 or 511, except for hours in excess of 11 hours of work in one day or 40 hours in one workweek. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this section. An employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same week pursuant to this section.

SEC. 8. Section 514 is added to the Labor Code, to read:

514. This chapter does not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

SEC. 9. Section 515 is added to the Labor Code, to read:

515. (a) The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, provided that the employee is primarily engaged in the duties which meet the test of the exemption and the employee earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. The commission shall conduct a review of the duties which meet the test of the exemption. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to duties which meet the test of the exemption without convening a wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(b) (1) The commission may establish additional exemptions to hours of work requirements under this division where it finds that hours or conditions of labor may be prejudicial to the health or welfare of employees in any occupation, trade, or industry. This paragraph shall become inoperative on January 1, 2005.

(2) Except as otherwise provided in this section and in subdivision (g) of Section 511, nothing in this section requires the commission to alter any exemption from provisions regulating hours of work that was contained in any valid wage order in effect in 1997. Except as otherwise provided in this division, the commission may review, retain, or eliminate any exemption from provisions regulating hours of work that was contained in any valid wage order in effect in 1997.

(c) For the purposes of this section "full-time employment" means employment in which an employee is employed for 40 hours per week.

(d) For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be $^1/_{40}$th of the employee's weekly salary.

(e) For the purposes of this section, "primarily" means more than one-half of the employee's work time.

(f) In addition to the requirements of subdivision (a), registered nurses employed to engage in the practice of nursing shall not be exempted from coverage under any part of the orders of the Industrial Welfare Commission, unless they individually meet the

criteria for exemptions established for executive or administrative employees.

SEC. 10. Section 516 is added to the Labor Code, to read:

516. Notwithstanding any other provision of law, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

SEC. 11. Section 517 is added to the Labor Code to read:

517. (a) The Industrial Welfare Commission shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter without convening wage boards, which orders shall be final and conclusive for all purposes. These orders shall include regulations necessary to provide assurances of fairness regarding the conduct of employee workweek elections, procedures for employees to petition for and obtain elections to repeal alternative workweek schedules, procedures for implementation of those schedules, conditions under which an adopted alternative workweek schedule can be repealed by the employer, employee disclosures, designations of work, and processing of workweek election petitions pursuant to Parts 2 and 4 of this division and in any wage order of the commission and such other regulations as may be needed to fulfill the duties of the commission pursuant to this part.

(b) Prior to July 1, 2000, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions in the ski industry, commercial fishing industry, and health care industry, and for stable employees in the horseracing industry. Notwithstanding subdivision (a) and Sections 510 and 511, and consistent with its duty to protect the health, safety, and welfare of workers pursuant to Section 1173, the commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to the industries herein, without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(c) Notwithstanding subdivision (a) of Section 515, prior to July 1, 2000, the commission shall conduct a review of wages, hours, and working conditions of licensed pharmacists. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to licensed pharmacists without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(d) Notwithstanding sections 1171 and subdivision (a) of Section 515, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions of outside salespersons. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to outside salespersons without convening wage boards. Any hearing

conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(e) Nothing in this section is intended to restrict the Industrial Welfare Commission in its continuing duties pursuant to Section 1173.

(f) No action taken by the Industrial Welfare Commission pursuant to this section is subject to the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(g) All wage orders and other regulations issued or adopted pursuant to this section shall be published in accordance with Section 1182.1.

SEC. 12. Section 554 of the Labor Code is amended to read:

554. Sections 551 and 552 shall not apply to any cases of emergency nor to work performed in the protection of life or property from loss or destruction, nor to any common carrier engaged in or connected with the movement of trains. This chapter, with the exception of Section 558, shall not apply to any person employed in an agricultural occupation, as defined in Order No. 14-80 (operative January 1, 1998) of the Industrial Welfare Commission, nor shall the provisions of this chapter apply when the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pursuant to Section 514. Nothing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, providing that in each calendar month the employee receive days of rest equivalent to one day's rest in seven. The requirement respecting the equivalent of one day's rest in seven shall apply, notwithstanding the other provisions of this chapter relating to collective bargaining agreements, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement respecting the hours of work of the employees, unless the agreement expressly provides otherwise.

In addition to the exceptions herein, the Chief of the Division of Labor Standards Enforcement may, when in his judgment hardship will result, exempt any employer or employees from the provisions of Sections 551 and 552.

SEC. 13. Section 556 of the Labor Code is amended to read:

556. Sections 551 and 552 shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof.

SEC. 14. Section 558 is added to the Labor Code, to read:

558. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any

order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

SEC. 15. Section 1182.1 of the Labor Code is amended to read:

1182.1. Any action taken by the commission pursuant to Sections 517 and 1182 shall be published in at least one newspaper in each of the Cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco. A summary of the action taken and notice of where the complete text of the new or amended order may be obtained may be published in lieu of the complete text when the commission determines such summary and notice will adequately inform the public. The statement as to the basis of the order need not be published.

SEC. 16. Section 1182.2 of the Labor Code is amended to read:

1182.2. (a) The Legislature finds that the hours and days of work of employees employed in California in the seasonal ski industry are subject to fluctuations which are beyond the control of their employers. The Legislature further finds that the economic interests of these employees are best served when minimum limitations are placed upon their hours and days of work. Accordingly, no employer who operates a ski establishment shall be in violation of any provision of this code or any applicable order of the Industrial Welfare Commission by instituting a regularly scheduled workweek of not more than 56 hours, provided that any employee shall be compensated at a rate of not less than one and one-half times the employee's regular rate of pay for any hours worked in excess of 56 hours in any workweek.

(b) As used in this section, "ski establishment" means an integrated, geographically limited recreational area comprised of the

basic skiing facilities, together with all operations and facilities related thereto.

(c) This section shall apply only during any month of the year when Alpine or Nordic skiing activities, including snowmaking and grooming activities, are actually being conducted by the ski establishment.

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

SEC. 17. Section 1182.3 of the Labor Code is amended to read:

1182.3. No employee licensed pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, or is employed on a commercial passenger fishing boat licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, shall be subject to a minimum wage or maximum hour order of the commission.

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

SEC. 18. Section 1182.9 of the Labor Code is amended to read:

1182.9. An employer engaged in the operation of a licensed hospital or providing personnel for the operation of a licensed hospital who institutes, pursuant to an applicable order of the commission, a regularly scheduled workweek that includes no more than three working days of no more than 12 hours each within any workweek, shall make a reasonable effort to find an alternative work assignment for any employee who participated in the vote which authorized the schedule and is unable to work 12-hour workday schedules. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment is not available or if the employee was hired after the adoption of the 12-hour, 3-day workweek schedule.

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

SEC. 19. Section 1182.10 of the Labor Code is amended to read:

1182.10. (a) Notwithstanding any other provision of this chapter, or any order of the commission, the employment of stable employees engaged in the raising, feeding, and management of racehorses by a trainer shall be subject to the same standards governing wages, hours, and conditions of labor as those established by the commission for employees in agricultural occupations engaged in the raising, feeding, and management of other livestock, except as set forth in subdivision (b).

(b) Notwithstanding the provisions of any order of the commission permitting employees employed in agricultural occupations to work 10 hours on each of six workdays in a seven-day

workweek without the payment of overtime compensation, stable employees shall not be employed more than 10 hours in any workday, nor more than 56 hours during seven days in any workweek. However, stable employees may be employed in excess of 10 hours in any workday, and in excess of 56 hours during seven days in one workweek, if these employees are compensated at a rate of not less than one and one-half times the employees' regular rate of pay for all hours worked in excess of 10 hours in any workday, or 56 hours in any workweek.

(c) For purposes of this section:

(1) "Stable employees" includes, but is not limited to, grooms, hotwalkers, exercise workers, and any other employees engaged in the raising, feeding, or management of racehorses, employed by a trainer at a racetrack or other nonfarm training facility.

(2) "Trainer" has the same definition as in Section 24001 of the Food and Agricultural Code.

(3) "Workday" and "workweek" have the same definition as in the order of the commission applicable to employees employed in agricultural occupations.

(4) "Regular rate of pay" includes all wages paid by the trainer to the stable employee for a workweek of not more than 56 hours, but excludes those amounts excluded from regular pay by Section 7(e) of the Fair Labor Standards Act (29 U.S.C. Sec. 207(e)), and excludes the payment of the stable employee's share, if any, of the purse of a race, whether that share is paid by the owner of the racehorse or by the trainer.

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

SEC. 20. Section 1183.5 of the Labor Code is repealed.

SEC. 21. Wage Orders number 1-98, 4-98, 5-98, 7-98, and 9-98 adopted by the Industrial Welfare Commission are null and void, and Wage Orders 1-89, 4-89 as amended in 1993, 5-89 as amended in 1993, 7-80, and 9-90 are reinstated until the effective date of wage orders issued pursuant to Section 517.

SEC. 22. The Industrial Welfare Commission shall study the extent to which alternative workweek schedules are used in California and the costs and benefits to employees and employers of those schedules, and report the results of the study and recommendations to the Legislature not later than July 1, 2001.

SEC. 23. 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.

CHAPTER 135

An act to amend Section 5549 of the Public Resources Code, relating to parks and recreation.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 5549 of the Public Resources Code is amended to read:

5549. (a) The general manager has the following administrative and executive functions, powers, and duties. The general manager shall do all of the following:

(1) Enforce this article and all ordinances and regulations of the district.

(2) Appoint subordinates, clerks, and other employees, and exercise supervision and control over all departments and offices of the district. Such appointees shall hold employment at the pleasure of the general manager.

(3) Attend all meetings of the board unless excused by the board.

(4) Submit to the board for adoption any measures, ordinances, and regulations he or she deems necessary or expedient.

(5) Enforce all terms and conditions imposed in favor of the district or its inhabitants in any contract and report any violations to the board or the police department, as appropriate.

(6) Prepare and submit the annual budget to the board, and perform all other duties imposed by this article or by the board.

(b) (1) With the approval of the board, the general manager may bind the district, in accordance with board policy, and without advertising, for the payment for supplies, materials, labor, or other valuable consideration for any purpose other than new construction of any building, structure, or improvement in amounts not exceeding ten thousand dollars ($10,000), and for the payment for supplies, materials, or labor for new construction of any building, structure, or improvement in amounts not exceeding twenty-five thousand dollars ($25,000). All expenditures shall be reported to the board of directors at its next regular meeting.

(2) Notwithstanding paragraph (1), with the approval of the board, the general manager of the East Bay Regional Park District may bind the district, in accordance with board policy, and without advertising, for the payment for supplies, materials, labor, or other valuable consideration for any purpose, including the new

construction of any building, structure, or improvement in amounts not exceeding twenty-five thousand dollars ($25,000). All expenditures shall be reported to the board of directors at its next regular meeting.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances in the East Bay Regional Park District. The facts constituting the special circumstances are that the East Bay Regional Park District needs to complete park maintenance and new construction projects that are necessary due to the unique geographical features of parklands within the jurisdiction of the district. This unique set of circumstances does not exist in any other state or local park or open-space preserve.

CHAPTER 136

An act to amend Section 6601 of, and to add and repeal Section 6601.1 of, the Welfare and Institutions Code, relating to sexually violent predators, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 6601 of the Welfare and Institutions Code is amended to read:

6601. (a) (1) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the

result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to

subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall not toll, discharge, or otherwise affect the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(*l*) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

SEC. 2. Section 6601.1 is added to the Welfare and Institutions Code, to read:

6601.1. (a) The Department of Justice, in cooperation with the Youth and Adult Correctional Agency and the State Department of Mental Health, shall report to the Legislature, on or before January 1, 2002, all of the following with regard to petitions to declare persons

to be sexually violent predators filed pursuant to Section 6601 between July 1, 1999 through June 30, 2001:

(1) The number of cases in which, despite a later judicial or administrative finding that a person's custody was unlawful, a petition filed under Section 6601 is not dismissed pursuant to paragraph (2) of subdivision (a) of Section 6601 because the unlawful custody was the result of a good faith mistake of fact or law.

(2) The circumstances in each case in which a petition filed pursuant to Section 6601 went forward despite a good faith mistake of fact or law that resulted in the unlawful custody of the person.

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

SEC. 3. The Legislature finds and declares that paragraph (2) of subdivision (a) of Section 6601 is declaratory of existing law. The Sexually Violent Predator Act authorizes civil commitment of persons who pose a danger as a result of a mental disorder if released from custody. Therefore, where a petition for commitment of a sexually violent predator has been filed, it is not the intent of the Legislature that a person be released based upon a subsequent judicial or administrative finding that all or part of a determinate prison sentence, parole revocation term, or a hold placed pursuant to Section 6601.3, was unlawful.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide immediate protection to the public from sexually violent predators, it is necessary that this act take effect immediately.

CHAPTER 137

An act to amend Section 7074 of, and to add Section 7074.5 to, the Government Code, relating to enterprise zones, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The Counties of Fresno and Kern have exceptionally high rates of unemployment.

(b) The two counties, which are top agricultural producers in the state, continue to experience difficulties in diversifying their economies.

(c) The two counties have unincorporated areas adjacent to existing enterprise zones and otherwise may meet the statutory criteria for expansion of those enterprise zones.

SEC. 2. Section 7074 of the Government Code is amended to read:

7074. (a) In the case of any enterprise zone, including an enterprise zone formerly designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, a city or county, or city and county may propose that the enterprise zone be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone. The agency may approve that expansion based upon the criterion specified in subdivision (b) of Section 7073.

(b) An enterprise zone that is located in the unincorporated area of a county may propose to use eligible expansion allotment to expand into an adjacent city or cities pursuant to this section if the agency finds that all of the following conditions exist:

(1) The governing body of the local agency with jurisdiction over the existing enterprise zone and the governing body of the local agency with jurisdiction over the proposed expansion area each approve the expansion by adoption of an ordinance or resolution.

(2) (A) Land included within the proposed expansion is zoned for industrial or commercial use.

(B) An expansion area may contain noncommercial or nonindustrial land only if that land is a right-of-way and is needed to meet the requirement for a contiguous expansion between an existing enterprise zone and a proposed expansion area.

(3) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems, is available to the area that would be included in the expansion.

(4) The expansion area is contiguous to the existing enterprise zone.

(c) (1) Except as otherwise provided in paragraph (2), in no event shall an enterprise zone be permitted to expand more than 15 percent in size from its size on the date of original designation, including any expansion authorized pursuant to Chapter 12.8 (commencing with Section 7070), or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(2) If an enterprise zone, on the date of original designation, is no greater than 13 square miles, it may be permitted to expand up to 20 percent in size from its size on the date of original designation.

SEC. 3. Section 7074.5 is added to the Government Code, to read:

7074.5. In the case of the Counties of Fresno and Kern, an enterprise zone that is located in a city or in the unincorporated area of the county may propose to use eligible expansion allotment to expand into an adjacent city or cities, or an adjacent unincorporated area of the county, subject to the conditions specified in Section 7074.

SEC. 4. Due to the unique circumstances of the economies of the Counties of Fresno and Kern, and of the configuration of the enterprise zones existing in those counties, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in Section 3 of this act is necessarily applicable only to the Counties of Fresno and Kern.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that local agencies may more efficiently expand enterprise zones within their jurisdictions at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 138

An act to amend Section 77212.5 of, to repeal and add Section 72115 of, and to repeal Section 26669 of, the Government Code, relating to court services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 26669 of the Government Code is repealed.

SEC. 2. Section 72115 of the Government Code is repealed.

SEC. 3. Section 72115 is added to the Government Code, to read:

72115. (a) Notwithstanding any other provision of law, the Board of Supervisors of San Bernardino County may, no later than 30 days after the effective date of this section, commence public hearings regarding the abolition of the marshal's office and the transferring of court-related services provided by the marshal within the county to the sheriff's department. Within 30 days of the commencement of public hearings as authorized by this section, the board shall make a final determination as to the most cost-effective and most efficient manner of providing court-related services.

(b) Concurrently, an election may be conducted among all of the judges of the Consolidated Courts of San Bernardino County to

provide an advisory recommendation to the board of supervisors on the abolition of the marshal's office and the transferring of court-related services provided by the marshal within the county to the sheriff's department. The outcome shall be determined by a simple majority of votes cast. The vote of the judges shall then be forwarded to the board of supervisors prior to the close of the public hearing, and the board of supervisors shall take into advisement the recommendation of the judges provided by the election report.

(c) If the board determines to abolish the marshal's office and transfer the duties of the marshal to the sheriff's office, the abolishment of the office and the transfer of those duties shall be completed within 30 days of that determination.

(d) The courtroom assignment of bailiffs after abolition of the marshal's office and the consolidation pursuant to this section shall be determined by a two-member committee comprised of the presiding judge of the consolidated court and the sheriff, or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned.

It is the intent of the Legislature, in enacting this subdivision, to ensure that courtroom assignments are made in a manner which best assures that the interests of the affected judge or commissioner and bailiff are protected.

(e) Notwithstanding any other provision of law, the marshal and all personnel of the marshal's office affected by the abolition of the marshal's office in San Bernardino County shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits, and, except as may be necessary for the operation of the agency under which court-related services and the service of civil and criminal process are consolidated, they shall not be involuntarily transferred out of the consolidated office for a period of five years following the consolidation.

(f) Personnel of the abolished marshal's office shall be entitled to request an assignment to another division within the sheriff's department, and that request shall be reviewed in the same manner as any other request from within the department. Persons who accept a voluntary transfer from the court services/civil division shall waive their rights pursuant to subdivision (e).

(g) Permanent employees of the marshal's office on the effective date of the abolition of the marshal's office pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office on the effective date of a consolidation pursuant to this section shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(h) All county service or service by employees of the marshal's office on the effective date of a consolidation pursuant to this section

shall be counted toward seniority in the consolidated office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(i) No employee of the marshal's office on the effective date of a consolidation pursuant to this section shall lose peace officer status, or otherwise be adversely affected as a result of the abolition and merger of personnel into the sheriff's department.

SEC. 4. Section 77212.5 of the Government Code is amended to read:

77212.5. (a) Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

(b) Commencing on July 1, 1999, and thereafter, the trial courts of a county of the seventh class in which court security was provided by the marshal's office as of July 1, 1998, shall, if the marshal's office is abolished, enter into an agreement regarding the provision of court security services with the successor sheriff's department.

SEC. 4.5. Section 77212.5 of the Government Code is amended to read:

77212.5. (a) Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

(b) Commencing on July 1, 1999, and thereafter, the trial courts of a county in which court security was provided by the marshal's office as of July 1, 1998, shall, if the marshal's office is abolished, enter into an agreement regarding the provision of court security services with the successor sheriff's department.

SEC. 5. Due to unique facts and circumstances applicable to San Bernardino County, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Special legislation is, therefore, necessarily applicable to only San Bernardino County.

SEC. 6. Section 4.5 of this bill shall only become operative if (1) this bill and SB 1196 are both enacted and become effective on or before January 1, 2000, (2) each bill amends Section 77212.5 of the Government Code, and (3) this bill is enacted after SB 1196, in which case Section 77212.5 of the Government Code, as amended by SB 1196, 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. 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.

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 the efficient operation and provision of court-related services in San Bernardino County, it is necessary for this act to take effect immediately.

CHAPTER 139

An act to amend Section 118215 of the Health and Safety Code, relating to medical waste.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 118215 of the Health and Safety Code is amended to read:

118215. (a) Except as provided in subdivisions (b) and (c), a person generating or treating medical waste shall ensure that the medical waste is treated by one of the following methods, thereby rendering it solid waste, as defined in Section 40191 of the Public Resources Code, prior to disposal:

(1) (A) Incineration at a permitted medical waste treatment facility in a controlled-air, multichamber incinerator, or other method of incineration approved by the department which provides complete combustion of the waste into carbonized or mineralized ash.

(B) Treatment with an alternative technology approved pursuant to paragraph (3), which, due to the extremely high temperatures of treatment in excess of 1300 degrees Fahrenheit, has received express approval from the department.

(2) Steam sterilization at a permitted medical waste treatment facility or by other sterilization, in accordance with all of the following operating procedures for steam sterilizers or other sterilization:

(A) Standard written operating procedures shall be established for biological indicators, or for other indicators of adequate sterilization approved by the department, for each steam sterilizer,

including time, temperature, pressure, type of waste, type of container, closure on container, pattern of loading, water content, and maximum load quantity.

(B) Recording or indicating thermometers shall be checked during each complete cycle to ensure the attainment of 121° Centigrade (250° Fahrenheit) for at least one-half hour, depending on the quantity and density of the load, to achieve sterilization of the entire load. Thermometers shall be checked for calibration annually. Records of the calibration checks shall be maintained as part of the facility's files and records for a period of three years or for the period specified in the regulations.

(C) Heat-sensitive tape, or another method acceptable to the enforcement agency, shall be used on each biohazard bag or sharps container that is processed onsite to indicate the attainment of adequate sterilization conditions.

(D) The biological indicator Bacillus stearothermophilus, or other indicator of adequate sterilization as approved by the department, shall be placed at the center of a load processed under standard operating conditions at least monthly to confirm the attainment of adequate sterilization conditions.

(E) Records of the procedures specified in subparagraphs (A), (B), and (D) shall be maintained for a period of not less than three years.

(3) (A) Other alternative medical waste treatment methods which are both of the following:

(i) Approved by the department.

(ii) Result in the destruction of pathogenic micro-organisms.

(B) Any alternative medical waste treatment method proposed to the department shall be evaluated by the department and either approved or rejected pursuant to the criteria specified in this subdivision.

(b) A medical waste may be discharged to a public sewage system without treatment if it is not a biohazardous waste of a type described in either subdivision (a) or (b) of Section 117635, it is liquid or semiliquid, and its discharge is consistent with waste discharge requirements placed on the public sewage system by the California regional water quality control board with jurisdiction.

(c) (1) A medical waste that is a biohazardous waste of a type described in subdivision (a) of Section 117635 may be treated by a chemical disinfection if the medical waste is liquid or semiliquid and the chemical disinfection method is recognized by the National Institutes of Health, the Centers for Disease Control and Prevention, or the American Biological Safety Association, and if the use of chemical disinfection as a treatment method is identified in the site's medical waste management plan.

(2) If the waste is not treated by chemical disinfection, in accordance with paragraph (1), the waste shall be treated by one of the methods specified in subdivision (a).

(3) Following treatment by chemical disinfection, the medical waste may be discharged to the public sewage system if the discharge is consistent with waste discharge requirements placed on the public sewage system by the California regional water control board, and the discharge is in compliance with the requirements imposed by the owner or operator of the public sewage system. If the chemical disinfection of the medical waste causes the waste to become a hazardous waste, the waste shall be managed in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20.

CHAPTER 140

An act to amend Sections 21115, 21115.1, and 24607 of, to add Sections 385.5, 4023, and 11713.10 to, and to add Article 5 (commencing with Section 21250) to Chapter 1 of Division 11 of, the Vehicle Code, relating to low-speed vehicles.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 385.5 is added to the Vehicle Code, to read:

385.5. A "low-speed vehicle" is a motor vehicle, other than a motor truck, having four wheels on the ground and an unladen weight of 1,800 pounds or less, that is capable of propelling itself at a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour, on a paved level surface. For the purposes of this section, a "low-speed vehicle" is not a golf cart, except when operated pursuant to Section 21115 or 21115.1.

SEC. 2. Section 4023 is added to the Vehicle Code, to read:

4023. A low-speed vehicle operated pursuant to Section 21115 or 21115.1 is exempt from registration.

SEC. 3. Section 11713.10 is added to the Vehicle Code, to read:

11713.10. It is unlawful and a violation of this code to sell a low-speed vehicle, as defined in Section 385.5, without disclosing to the buyer the vehicle's maximum speed and the potential risks of driving a low-speed vehicle.

SEC. 4. Section 21115 of the Vehicle Code is amended to read:

21115. (a) If a local authority finds that a highway under its jurisdiction is located adjacent to, or provides access to, a golf course and between the golf course and the place where golf carts are parked or stored or is within or bounded by a real estate development offering golf facilities and is designed and constructed, so as to safely permit the use of regular vehicular traffic and also the driving of golf carts on the highway, the local authority may, by resolution or

ordinance, designate the highway or portion of the highway for combined use and prescribe rules and regulations that shall have the force of law. No highway shall be so designated for a distance of more than one mile from the golf course if the highway is not located within a development or beyond the area of a development, provided, the finding of the local authority in this respect shall be conclusive. Upon the designation becoming effective it shall be lawful to drive golf carts upon the highway in accordance with the prescribed rules and regulations. The rules and regulations may establish crossing zones and speed limits and other operating standards but shall not require that the golf carts conform to any requirements of this code with respect to registration, licensing, or equipment, except that if operated during darkness the golf cart shall be subject to the provisions of Section 24001.5 regarding equipment.

The rules and regulations shall not be effective until appropriate signs giving notice thereof are posted along the highway affected.

A "real estate development offering golf facilities," for purposes of this section, means an area of single-family or multiple-family residences, the owners or occupants of which are eligible for membership in, or the use of, one or more golf courses within the development by virtue of their ownership or occupancy of a residential dwelling unit in the development.

(b) For purposes of this section, a "golf cart" includes a low-speed vehicle.

SEC. 5. Section 21115.1 of the Vehicle Code is amended to read:

21115.1. (a) Notwithstanding Section 21115, a local authority may, by ordinance or resolution, establish crossing zones, for use by golf carts at any time other than during darkness, on any street, other than a state highway, that has a posted speed limit of 45 miles per hour or less and that is immediately adjacent to a golf course. The crossing zones shall be at an angle of approximately 90 degrees to the direction of the roadway. The ordinance or resolution shall not become effective until submitted to the law enforcement agency having primary jurisdiction over the street, the law enforcement agency finds and determines that the conditions pertaining to that street, with the addition of proper signs, markers, or lighting, or any combination of those, will permit the establishment of a golf cart crossing with reasonable safety, and the signs, markers, or lighting specified by the law enforcement agency are in place.

(b) Subdivision (a) does not constitute precedent for the operation of golf carts on any street or highway other than in a crossing zone established pursuant to subdivision (a).

(c) For purposes of this section, a "golf cart" includes a low-speed vehicle.

SEC. 6. Article 5 (commencing with Section 21250) is added to Chapter 1 of Division 11 of the Vehicle Code, to read:

Article 5. Operation of Low-Speed Vehicles

21250. For the purposes of this article, a low-speed vehicle means a vehicle as defined in Section 385.5.

21251. Except as provided in Sections 4023, 21115, and 21115.1, a low-speed vehicle is subject to all the provisions applicable to a motor vehicle, and the driver of a low-speed vehicle is subject to all the provisions applicable to the driver of a motor vehicle or other vehicle, when applicable, by this code or any other code, with the exception of those provisions which, by their very nature, can have no application.

21252. A vehicle dealer, selling a low-speed vehicle, shall provide to the buyer a disclosure statement regarding the operation of the vehicle that is in compliance with existing provisions of the California Code of Regulations.

21253. A low-speed vehicle operated or parked on the roadway shall at all times meet federal Motor Vehicle Safety Standards established for low-speed vehicles in Section 571.500 of Title 49 of the Code of Federal Regulations.

21254. A motor vehicle that was originally designated as a low-speed vehicle and that has been modified or altered to exceed 25 miles per hour shall not qualify for the relaxed federal Motor Vehicle Safety Standards established for low-speed vehicles and instead shall meet all federal Motor Vehicle Safety Standards for a passenger vehicle.

21260. (a) Except as provided in paragraph (1) of subdivision (b), the operator of a low-speed vehicle shall not operate the vehicle on any roadway with a speed limit in excess of 35 miles per hour.

(b) (1) The operator of a low-speed vehicle may cross a roadway with a speed limit in excess of 35 miles per hour if the crossing begins and ends on a roadway with a speed limit of 35 miles per hour or less and occurs at an intersection of approximately 90 degrees.

(2) Notwithstanding paragraph (1), the operator of a low-speed vehicle shall not traverse an uncontrolled intersection with any state highway unless that intersection has been approved and authorized by the agency having primary traffic enforcement responsibilities for that crossing by a low-speed vehicle.

21266. (a) Notwithstanding Section 21260, local authorities, by ordinance or resolution, may restrict or prohibit the use of low-speed vehicles.

(b) Notwithstanding Section 21260, a local law enforcement agency with primary traffic enforcement responsibilities or the Department of the California Highway Patrol may prohibit the operation of a low-speed vehicle on any roadway under that agency's or department's jurisdiction when the agency or the department deems the prohibition to be in the best interest of public safety. Any such prohibition shall become effective when appropriate signs giving notice thereof are erected upon the roadway.

SEC. 7. Section 24607 of the Vehicle Code is amended to read:

24607. Every vehicle subject to registration under this code shall at all times be equipped with red reflectors mounted on the rear as follows:

(a) Every vehicle shall be equipped with at least one reflector so maintained as to be plainly visible at night from all distances within 350 to 100 feet from the vehicle when directly in front of the lawful upper headlamp beams.

(b) Every vehicle, other than a motorcycle or a low-speed vehicle, manufactured and first registered on or after January 1, 1965, shall be equipped with at least two reflectors meeting the visibility requirements of subdivision (a), except that trailers and semitrailers manufactured after July 23, 1973, that are less than 30 inches wide, may be equipped with one reflector which shall be mounted at or near the vertical centerline of the trailer. If the vehicle is equipped with two reflectors, they shall be mounted as specified in subdivision (d).

(c) Every motortruck having an unladen weight of more than 5,000 pounds, every trailer coach, every camp trailer, every vehicle, or vehicle at the end of a combination of vehicles, subject to subdivision (a) of Section 22406, and every vehicle 80 or more inches in width manufactured on or after January 1, 1969, shall be equipped with at least two reflectors maintained so as to be plainly visible at night from all distances within 600 feet to 100 feet from the vehicle when directly in front of lawful upper headlamp beams.

(d) When more than one reflector is required, at least one shall be mounted at the left side and one at the right side, respectively, at the same level. Required reflectors shall be mounted not lower than 15 inches nor higher than 60 inches, except that a tow truck, in addition to being equipped with the required reflectors, may also be equipped with two reflectors which may be mounted not lower than 15 inches nor higher than the maximum allowable vehicle height and as far forward as the rearmost portion of the driver's seat in the rearmost position. Additional reflectors of a type meeting requirements established by the department may be mounted at any height.

(e) Reflectors on truck tractors may be mounted on the rear of the cab. Any reflector installed on a vehicle as part of its original equipment prior to January 1, 1941, need not meet the requirements of the department provided it meets the visibility requirements of subdivision (a).

(f) Area reflectorizing material may be used in lieu of the reflectors required or permitted in subdivisions (a), (b), (c), (d), and (e), provided each installation is of sufficient size to meet the photometric requirement for those reflectors.

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.

CHAPTER 141

An act to add Chapter 1.10 (commencing with Section 15365.30) to Part 6.7 of Division 3 of Title 2 of the Government Code, relating to international trade.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. (a) The Legislature finds and declares that many nations look to the West, particularly to the United States and especially to California, for providing needed products and services. This interest has generated a number of visitors to the Central Valley who are searching for suppliers to meet their needs. It is estimated that, on average, more than one delegation from a foreign country visits the Central Valley each week of the year. The manner in which these visits occur and the manner in which they are handled, for the most part, fail to recognize cultural differences and, in general, fail to establish long-lasting business relationships. Economic opportunities for the communities of the Central Valley are lost due to the lack of a professionally organized marketing coordination. Some impact of this effect is reflected in the United States balance of trade deficit figures.

(b) The Legislature further finds and declares that the creation of the California Central Valley International Trade Center in Tulare will help the businesses of the Central Valley obtain a larger share of the global market for Central Valley products and services and create new jobs through active expansion of export markets. The identification and use of public and private resources from throughout the Central Valley in this undertaking will make possible the employment of the best and most modern practices of export technology to build and sustain a model trade development organization, including the development and application of electronic commerce designed to maximize exports of agricultural commodities and other California manufactured or processed products.

SEC. 2. Chapter 1.10 (commencing with Section 15365.30) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 1.10. CALIFORNIA CENTRAL VALLEY INTERNATIONAL TRADE CENTER

15365.30. (a) The California Central Valley International Trade Center in Tulare has been created for the purpose of assisting Central Valley businesses interested in expanding their markets.

(b) It is the intent of the Legislature that the Central Valley International Trade Center in Tulare County coordinate and work cooperatively with other ongoing international trade efforts in the Central Valley, including the Counties of Fresno, Kern, Kings, Madera, San Joaquin, Stanislaus, and Tulare.

15365.31. The California Central Valley International Trade Center in Tulare is working cooperatively with federal, state, and local governments, as well as chambers of commerce, economic development organizations, trade and product associations, service providers, and private enterprise throughout the Central Valley to accomplish all of the following:

(a) Identify and recruit delegations of potential foreign buyers of products produced in the Central Valley.

(b) Coordinate visits to the Central Valley by arranging tours, meetings, and social functions that begin the relationship-building process.

(c) Prepare a data base of existing and potential exporters of goods and services in the Central Valley.

(d) Provide information to Central Valley businesses interested in exporting products and services regarding various opportunities made possible by foreign interests.

(e) Provide support services, such as telecommunications, meeting rooms, interpreters, materials, and supplies.

(f) Support a permanent display area, well stocked with brochures and data, to showcase products and services of Central Valley businesses.

(g) Coordinate regional trade activities with international contacts.

(h) Organize and conduct trade missions to prospective client operations and countries.

(i) Organize group participation in international shows and other events.

(j) Identify governmental programs offering export assistance and solicit support.

(k) Conduct training and informational programs for interested parties to promote trade opportunities using the resources of existing export trade centers and services.

(*l*) Engage in the establishment of a regional export incubator program and center for small business and internship for students enrolled in international trade studies.

(m) Organize promotional programs and marketing materials relating to Central Valley exports.

(n) Maintain liaison between government agencies, Central Valley businesses, and foreign buyers.

SEC. 3. It is the intent of the Legislature that funding for the California Central Valley International Trade Center in Tulare for the purposes described in subdivisions (a) to (n), inclusive, of Section 15365.31 of the Government Code be appropriated in the annual Budget Act or in another measure.

CHAPTER 142

An act to amend Section 12050 of the Penal Code, relating to concealed weapons licenses.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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), subparagraphs (C) and (D) 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.

(D) A license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed four years from the date of the license if the license is issued to a custodial officer who is an employee of the sheriff as provided in Section 831.5, except that the license shall be invalid upon the conclusion of the person's employment pursuant to Section 831.5 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.

(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.

CHAPTER 143

An act to amend Section 55861 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 55861 of the Food and Agricultural Code is amended to read:

55861. (a) Except as otherwise provided in this article or in Section 56574, each applicant for a license shall pay to the department a fee in accordance with the schedule in subdivision (b), except that an agent shall pay thirty-five dollars ($35) for each license period of the principal.

(b) The amount of the fee due each year from the applicant shall be determined by the annual dollar volume of business based on the value of the farm products that is returned to the grower, as follows:

(1) For a dollar volume of less than twenty thousand dollars ($20,000), the fee shall be one hundred dollars ($100).

(2) For a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be four hundred dollars ($400). Effective January 1, 1999, for a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be three hundred dollars ($300). Effective January 1, 2000, for a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be two hundred dollars ($200).

(3) For a dollar volume of fifty thousand dollars ($50,000) and over, but less than two million dollars ($2,000,000), the fee shall be five hundred dollars ($500). Effective January 1, 1999, for a dollar volume of fifty thousand dollars ($50,000) and over, but less than two million dollars ($2,000,000), the fee shall be four hundred dollars ($400). Effective January 1, 2000, for a dollar volume of fifty thousand dollars ($50,000) and over, but less than two million dollars ($2,000,000), the fee shall be three hundred dollars ($300).

(4) For a dollar volume of two million dollars ($2,000,000) and over, the fee shall be six hundred dollars ($600). Effective January 1, 1999, for a dollar volume of two million dollars ($2,000,000) and over, the fee shall be five hundred dollars ($500). Effective January 1, 2000, for a dollar volume of two million dollars ($2,000,000) and over, the fee shall be four hundred dollars ($400).

(c) The department shall reevaluate the fee structure based on operating costs in fiscal years 1998–99 and 1999–2000 and, notwithstanding Section 7550.5 of the Government Code, shall report on the fee structure to the Legislature within 60 days subsequent to June 30, 2000. The report shall include, but shall not be limited to, a summary of the fees paid by commodity and dollar volume, an analysis of whether the fee structure is appropriate to overall program revenues, and the volume of services utilized by the major commodity groups covered under this chapter. The fees shall adequately cover the costs to fully administer and operate the program in an effective and efficient manner.

CHAPTER 144

An act to amend Sections 1088, 13021, 13028, and 13050 of, and to add Section 13009.5 to, the Unemployment Insurance Code, relating to taxation.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 1088 of the Unemployment Insurance Code is amended to read:

1088. (a) (1) Each employer shall file with the director within the time required by subdivision (a) or (d) of Section 1110 for payment of employer contributions, a report of contributions and a report of wages paid to his or her workers in the form and containing any information as the director prescribes. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions. The report

of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028.

(2) (A) In order to enhance efforts to reduce tax fraud and to reduce the personal income tax reporting burden, effective January 1, 1997, the report of wages shall also include the full first name of the employee and total wages, as defined in Section 13009, paid to each employee. This paragraph shall apply to reports of wages for all periods ending on or before December 31, 1999.

(B) For all periods beginning on or after January 1, 2000, the report of wages shall also include total wages subject to personal income tax, as defined in Section 13009.5, paid to each employee.

(b) Each employer shall file with the director within the time required by subdivision (b) or (d) of Section 1110 for payment of worker contributions, a report of contributions containing the employer's business name, address, and account number, the total amount of worker contributions due, and any other information as the director shall prescribe. The director shall prescribe the form for the report of contributions. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions.

(c) In addition to the report of contributions and report of wages required by employers under subdivision (a), an individual who has elected coverage under subdivision (a) of Section 708 is also required to file a separate report of contributions, subject to Part 2 (commencing with Section 2601).

(d) Any employer making an election under subdivision (d) of Section 1110 shall submit the report of wages described in subdivision (a), within the time required for submitting employer contributions under subdivision (a) of Section 1110.

(e) In addition to the report of contributions and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the total amount of wages, employer contributions required under Sections 976 and 976.6, worker contributions required under Section 984, the amounts required to be withheld under Section 13020 or withheld under Section 13028, and any other information as the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

This subdivision shall not apply to individuals electing coverage under Section 708 or 708.5 or employers electing financing under Section 821.

(f) For purposes of making a report of wages under subdivision (a), employers who are required under Section 6011 of the Internal Revenue Code and authorized regulations thereunder to file magnetic media returns, shall, within 90 days of becoming subject to this requirement, do one of the following:

(1) Submit a magnetic media format to the department for approval, and upon receiving approval from the department, submit any subsequent reports of wages on magnetic media.

(2) Establish to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from submitting magnetic media information returns for federal purposes, or other good cause for not complying with the provisions of this subdivision. Approved waivers shall be valid for six months or longer, at the discretion of the director.

(g) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

(h) If an employer demonstrates that an undue hardship would be imposed, the director may authorize an exemption from the requirement in subdivision (a) to report individual amounts withheld under Section 13020 and the requirement in subdivision (e) to file the annual reconciliation return for the 1995 calendar year only. Any request for exemption must be filed on or before January 15, 1995. Upon approval of a request for exemption under this subdivision, the employer shall file quarterly returns and reports of wages in the manner and method prescribed by the director for the 1995 calendar year only.

SEC. 2. Section 13009.5 is added to the Unemployment Insurance Code, to read:

13009.5. (a) For purposes of the report required by subdivision (a) of Section 1088 and the statement required by Section 13050, "wages subject to personal income tax" means all of the following:

(1) Remuneration defined as wages by Section 13009, except that in the case of tips received by an employee in the course of his or her employment, the amounts shall include only those tips included in statements furnished to the employer, pursuant to Section 13055.

(2) Remuneration described in subdivisions (a), (b), (f), and (*l*) of Section 13009, to the extent included in gross income.

(3) Payments made by a third party for sick pay as specified in Section 931.5.

(A) Any employer who receives a report of wages from a third-party payer as provided for in subdivisions (a) and (b) of Section 931.5 shall report those wages to the department as required under paragraph (2) of subdivision (a) of Section 1088.

(B) Any third-party payer described in Section 931.5 who fails to report wages to an employer as provided for in that section shall report those wages to the department as required under paragraph (2) of subdivision (a) of Section 1088.

(b) (1) A person or entity shall not be required to register with the Employment Development Department solely for the purpose of reporting wages subject to personal income tax pursuant to Section 1088 unless that registration is otherwise required by this code.

(2) A person or entity shall not be required to withhold any tax under Section 13020 for wages, as defined by this section, unless that

person or entity is required to withhold tax for those wages as defined by Section 13009.

SEC. 3. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding report and a report of wages in a form prescribed by the department, and pay over the taxes so required to be withheld. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028. Except as provided in subdivisions (c) and (d) of this section, the employer shall file a withholding report and remit the total amount of income taxes withheld during the calendar quarter on or before the last day of the month following the close of the calendar quarter.

(b) Every employer electing to file a single annual return under subdivision (d) of Section 1110 shall report and pay any taxes withheld under Section 13020 on an annual basis within the time specified in subdivision (d) of Section 1110.

(c) (1) Effective January 1, 1995, whenever an employer is required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than five hundred dollars ($500), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of banking days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(2) Effective January 1, 1996, the five hundred dollar ($500) amount referred to in paragraph (1) shall be adjusted annually as follows, based on the annual average rate of interest earned on the Pooled Money Investment Fund as of June 30 in the prior fiscal year:

Average Rate of Interest	
Greater than or equal to 9 percent:	$ 75
Less than 9 percent, but greater than or equal to 7 percent:	250
Less than 7 percent, but greater than or equal to 4 percent:	400
Less than 4 percent:	500

(d) (1) Notwithstanding subdivisions (a) and (c), for calendar years beginning prior to January 1, 1995, if in the 12-month period ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for eight-monthly periods, as defined under Section 6302 of the Internal Revenue Code

and regulations thereunder, was fifty thousand dollars ($50,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eight-monthly period, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (c), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars ($20,000) or more, the employer shall remit the total amount of income tax withheld within the number of banking days as specified for federal income taxes by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required by this paragraph to make payments by electronic funds transfer of these requirements.

(3) Notwithstanding paragraph (2), effective January 1, 1995, electronic funds transfer payments that are subject to the one-day deposit rule, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder, shall be deemed timely if the payment settles to the state's demand account within three banking days after the date the employer meets the threshold for the one-day deposit rule.

(4) Any taxpayer required to remit payments pursuant to paragraphs (1) and (2) may request from the department a waiver of those requirements. The department may grant a waiver only if it determines that the particular amounts paid in excess of fifty

thousand dollars ($50,000) or twenty thousand dollars ($20,000), as stated in paragraphs (1) and (2), respectively, were the result of an unprecedented occurrence for that employer, and were not representative of the employer's cumulative average payment in prior years.

(5) Any state agency required to remit payments pursuant to paragraphs (1) and (2) may request a waiver of those requirements from the department. The department may grant a waiver if it determines that there will not be a negative impact on the interest earnings of the General Fund. If there is a negative impact to the General Fund, the department may grant a waiver if the requesting state agency follows procedures designated by the department to mitigate the impact to the General Fund.

(e) Any employer not required to make payment pursuant to subdivision (d) of this section may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the date specified in the notification to the employer of approval.

(3) The election shall be operative from the date specified in the notification of approval, and shall continue in effect until terminated by the employer or the department.

(4) Funds remitted by electronic funds transfer pursuant to this subdivision shall be deemed complete in accordance with subdivision (d) or as deemed appropriate by the director to encourage use of this payment method.

(f) Notwithstanding Section 1112, no interest or penalties shall be assessed against any employer who remits at least 95 percent of the amount required by subdivision (c) or (d), provided that the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with the provisions of subdivision (c) or (d).

(g) The department may, if it believes that action is necessary, require any employer to make the report required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(h) Any employer required to withhold any tax and who is not required to make payment under subdivision (c) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars ($350) or more.

(i) For purposes of subdivisions (a), (c), and (h), payment is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail.

(j) In addition to the withholding report and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the amount required to be withheld under Section 13020, and any other information the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

(k) If an employer demonstrates that an undue hardship would be imposed, the director may authorize an exemption from the requirement in subdivision (a) to report individual amounts withheld under Section 13020 and the requirement in subdivision (j) to file the annual reconciliation return for the 1995 calendar year only. Any request for exemption must be filed on or before January 15, 1995. Upon approval of a request for exemption under this subdivision, the employer shall file quarterly returns reporting the amount withheld under Section 13020, the statement required to be furnished under Section 13050, and the annual return required by Section 13053, for the 1995 calendar year only.

SEC. 4. Section 13028 of the Unemployment Insurance Code is amended to read:

13028. (a) (1) For purposes of this division (and so much of Part 10 (commencing with Section 17001) and Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code as relates to this division) pensions, annuities, and other deferred income, as described in Section 3405 of the Internal Revenue Code, are wages and subject to withholding under this division. Amounts withheld shall be treated as if the amounts are withheld by an employer for a payroll period and only amounts withheld shall be reported to the department pursuant to Section 1088 and Section 13021.

(2) Notwithstanding paragraph (1), amounts excluded from gross income by Section 17131.5 of the Revenue and Taxation Code are not wages and are not subject to withholding under this division.

(b) If an individual makes an election under Section 3405(a)(2) or Section 3405(b)(3) of the Internal Revenue Code not to have tax withheld, that election shall apply to withholding under this division, unless the individual elects, with the consent of the payer, to have those payments subject to withholding under this division. If an individual has not made an election under Section 3405(a)(2) or Section 3405(b)(3) of the Internal Revenue Code, that individual may elect to exclude those payments from withholding under this division. Elections provided in this subdivision shall be made pursuant to regulations of the director.

(c) Where Section 3405 of the Internal Revenue Code provides that tables or other computational procedures shall be prescribed by the Secretary of the Treasury, for the purposes of this division, any of the following amounts may be withheld, upon election of the payer:

(1) An amount determined by the method prescribed under Section 13020.

(2) A designated dollar amount as requested by the payee.

(3) Ten percent of the amount of federal withholding computed pursuant to Section 3405 of the Internal Revenue Code.

(d) Where the amount of withholding computed pursuant to subdivision (c) is less than ten dollars ($10) per month, the payer shall not be required to withhold that amount.

(e) This section shall not apply to pensions, annuities, and other deferred income of payees with addresses outside this state, as shown on the most current records of the payer.

(f) The department shall, in consultation with the affected payers and payees, issue regulations to implement this section.

Those regulations shall provide for delay (but not beyond July 1, 1987) of the application of this section with respect to any payer or class of payers until that time as the payers are able to comply without undue hardship with the requirements of this section. In that case, no retroactive compliance shall be required.

SEC. 5. Section 13050 of the Unemployment Insurance Code is amended to read:

13050. (a) Every employer or person required to deduct and withhold from an employee a tax under Section 986, 3260, or 13020, or who would have been required to deduct and withhold a tax under Section 13020 (determined without regard to Section 13025) if the employee had claimed no more than one withholding exemption, shall furnish to each employee in respect of the remuneration paid by the person to the employee during the calendar year, on or before January 31 of the succeeding year, or, if his or her employment is terminated before the close of the calendar year, on the day on which the last payment of remuneration is made, a written statement showing all of the following:

(1) The name of the person.

(2) The name of the employee, and his or her social security or identifying number if wages have been paid.

(3) The total amount of wages subject to personal income tax, as defined by Section 13009.5.

(4) The total amount deducted and withheld as tax under Section 13020.

(5) The total amount of worker contributions paid by the employee pursuant to Section 986.

(6) The total amount of worker contributions paid by the employee pursuant to Section 3260.

(7) The total amount of elective deferrals (within the meaning of Section 402(g)(3) of the Internal Revenue Code) and compensation deferred pursuant to Section 457 of the Internal Revenue Code.

(b) The statement required to be furnished pursuant to this section in respect of any remuneration shall be furnished at other times, shall contain other information, and shall be in a form, as the department may by authorized regulations prescribe.

(c) (1) A duplicate of any statement made pursuant to this section and in accordance with authorized regulations prescribed by the department shall, when required by the regulations, be filed with the department.

(2) Effective January 1, 1995, this subdivision shall apply only to those employers exempted under subdivision (h) of Section 1088 or subdivision (k) of Section 13021 from the requirements to report individual amounts withheld on the report of wages and to file the annual reconciliation return for the 1995 calendar year only. This subdivision shall remain in effect only until March 1, 1996, and on that date is repealed, unless a later enacted statute that is enacted before March 1, 1996, deletes or extends that date.

(d) If, during any calendar year, any person makes a payment of third-party sick pay to an employee, that person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom the payment was made showing all of the following:

(1) The name and, if there is withholding under this division, the social security number of that employee.

(2) The total amount of the third-party sick pay paid to that employee during the calendar year.

(3) The total amount, if any, deducted and withheld from that sick pay under this division. For purposes of the preceding sentence, the term "third-party sick pay" means any sick pay, as defined in subdivision (b) of Section 13028.6, which does not constitute wages for purposes of this division, determined without regard to subdivision (a) of Section 13028.6.

(A) The reporting requirements of subdivision (a) with respect to any payments shall, with respect to those payments, be in lieu of the requirements of subdivision (a) and of Section 18637 of the Revenue and Taxation Code.

(B) For purposes of Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, the statements required to be furnished by this subdivision shall be treated as statements required under this section to be furnished to employees.

(C) Every employer who receives a statement under this subdivision with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to that employee showing all of the following:

(i) The information shown on the statement furnished under this subdivision.

(ii) If any portion of the sick pay is excludable from gross income pursuant to Article 3 (commencing with Section 17131) of Chapter 3 of Part 10 of Division 2 of the Revenue and Taxation Code, the portion that is not so excludable and the portion that is so excludable. To the extent practicable, the information required under the preceding sentence shall be furnished on or with the statement, if any, required under subdivision (a).

(e) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

CHAPTER 145

An act to amend Section 10251 of the Corporations Code, and to amend Sections 1063, 10531, 17351, and 21524 of, to add Chapter 3 (commencing with Section 16320) to Part 4 of Division 9 of, and to repeal Chapter 3 (commencing with Section 16300) of Part 4 of Division 9 of, the Probate Code, relating to the Uniform Principal and Income Act.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 10251 of the Corporations Code is amended to read:

10251. (a) "Educational institution," as used in this section, means any nonprofit corporation organized under Chapter 4 (commencing with Section 94400) or Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code or organized under Part 1 (commencing with Section 9000) of this division in effect on December 31, 1979, and designated on or after January 1, 1980, as a nonprofit public benefit corporation, or organized for charitable or eleemosynary purposes under Part 2 (commencing with Section 5110) of this division, or Part 3 (commencing with Section 10200) of this division in effect on December 31, 1979, and designated on or after January 1, 1980, as a nonprofit public benefit corporation for the purpose of establishing, conducting or maintaining an institution offering courses beyond high school and issuing or conferring a diploma or for the purpose of offering or conducting private school instruction on the high school or elementary school level and any charitable trust organized for such purpose or purposes. "Educational institution," as used in this section, also means the University of California, the California State University, the

California Community Colleges, and any auxiliary organization, as defined in Section 89901 of the Education Code, established for the purpose of receiving gifts, property and funds to be used for the benefit of a state college.

(b) It shall be lawful for any educational institution to become a member of a nonprofit corporation incorporated under the laws of any state for the purpose of maintaining a common trust fund or similar common fund in which nonprofit organizations may commingle their funds and property for investment and to invest any and all of its funds, whenever and however acquired, in the common fund or funds; provided that, in the case of funds or property held as fiduciary, the investment is not prohibited by the wording of the will, deed, or other instrument creating the fiduciary relationship.

(c) An educational institution electing to invest in a common fund or funds under this section may elect to receive distributions from each fund in an amount not to exceed for each fiscal year the greater of the income, as determined under the Uniform Principal and Income Act, Chapter 3 (commencing with Section 16320) of Part 4 of Division 9 of the Probate Code, accrued on its interest in the fund or 10 percent of the value of its interest in the fund as of the last day of its next preceding fiscal year. The educational institution may expend the distribution or distributions for any lawful purpose notwithstanding any general or special law characterizing the distribution, or any part thereof, as principal or income; provided that, in the case of funds or property invested as fiduciary, the expenditure is not prohibited by the wording of the will, deed, or other instrument creating the fiduciary relationship. No such prohibition of expenditure shall be deemed to exist solely because a will, deed, or other instrument, whether executed or in effect before or after the effective date of this section, directs or authorizes the use of only the "income," or "interest," or "dividends" or "rents, issues or profits," or contains words of similar import.

(d) The Corporate Securities Law of 1968 shall not apply to the creation, administration, or termination of common trust funds authorized under this section, or to participation therein.

(e) This section shall become operative on January 1, 1997.

SEC. 2. Section 1063 of the Probate Code is amended to read:

1063. (a) In all accounts, there shall be an additional schedule showing the estimated market value of the assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of the accounting period for all accounts subsequent to the initial account. The requirement of an estimated value of real estate, a closely held business, or other assets without a ready market, may be satisfied by a good faith estimate by the fiduciary.

(b) If there were purchases or other changes in the form of assets occurring during the period of the account, there shall be a schedule showing these transactions. However, no reporting is required for

transfers between cash or accounts in a financial institution or money market mutual funds as defined in subdivision (d) of Section 8901.

(c) If an estate of a decedent or a trust will be distributed to an income beneficiary, there shall be a schedule showing an allocation of receipts and disbursements between principal and income.

(d) If there is specifically devised property, there shall be an additional schedule accounting for income, disbursements, and proceeds of sale pursuant to Section 12002 and subdivision (a) of Section 16340.

(e) If any interest has been paid or is to be paid under Section 12003, 12004, or 12005, or subdivision (b) of Section 16340, there shall be a schedule showing the calculation of the interest.

(f) If the accounting contemplates a proposed distribution, there shall be a schedule setting forth the proposed distribution, including the allocation of income required under Section 12006. If the distribution requires an allocation between trusts, the allocation shall be set forth on the schedule, unless the allocation is to be made by a trustee after receipt of the assets. If the distribution requires valuation of assets as of the date of distribution, the schedule shall set forth the fair market value of those assets.

(g) If, at the end of the accounting period, there are liabilities of the estate or trust, except current or future periodic payments, including rent, salaries, utilities, or other recurring expenses, there shall be a schedule showing all of the following:

(1) All liabilities which are a lien on estate or trust assets.

(2) Taxes due but unpaid as shown on filed returns or assessments received subsequent to filing of returns.

(3) All notes payable.

(4) Any judgments for which the estate or trust is liable.

(5) Any other material liability.

SEC. 3. Section 10531 of the Probate Code is amended to read:

10531. (a) The personal representative has the power to manage and control property of the estate, including making allocations and determinations under the Uniform Principal and Income Act, Chapter 3 (commencing with Section 16320) of Part 4 of Division 9. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in any case where a provision of Chapter 3 (commencing with Section 10500) governing the exercise of a specific power so requires.

SEC. 4. Chapter 3 (commencing with Section 16300) of Part 4 of Division 9 of the Probate Code is repealed.

SEC. 5. Chapter 3 (commencing with Section 16320) is added to Part 4 of Division 9 of the Probate Code, to read:

CHAPTER 3. UNIFORM PRINCIPAL AND INCOME ACT

Article 1. Short Title and Definitions

16320. This chapter may be cited as the Uniform Principal and Income Act.

16321. The definitions in this article govern the construction of this chapter.

16322. "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

16323. "Fiduciary" means a personal representative or a trustee.

16324. "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 5.1 (commencing with Section 16350), 5.2 (commencing with Section 16355), or 5.3 (commencing with Section 16360).

16325. "Income beneficiary" means a person to whom net income of a trust is or may be payable.

16326. "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the trust requires it to be distributed or authorizes it to be distributed in the trustee's discretion.

16327. "Mandatory income interest" means the right of an income beneficiary to receive net income that the trust requires the fiduciary to distribute.

16328. "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the accounting period, plus or minus transfers under this chapter to or from income during the accounting period.

Article 2. General Provisions and Fiduciary Duties

16335. (a) In allocating receipts and disbursements to or between principal and income, and with respect to any other matter within the scope of this chapter, a fiduciary:

(1) Shall administer a trust or decedent's estate in accordance with the trust or the will, even if there is a different provision in this chapter.

(2) May administer a trust or decedent's estate by the exercise of a discretionary power of administration given to the fiduciary by the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter, and no inference that the fiduciary has improperly exercised the discretion

arises from the fact that the fiduciary has made an allocation contrary to a provision of this chapter.

(3) Shall administer a trust or decedent's estate in accordance with this chapter if the trust or the will does not contain a different provision or does not give the fiduciary a discretionary power of administration.

(4) Shall add a receipt or charge a disbursement to principal to the extent that the trust or the will and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by a trust, a will, or this chapter, including the trustee's power to adjust under subdivision (a) of Section 16336, the fiduciary shall administer the trust or decedent's estate impartially, except to the extent that the trust or the will expresses an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion in accordance with this chapter is presumed to be fair and reasonable to all beneficiaries.

16336. (a) Subject to subdivision (b), a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(1) The trustee invests and manages trust assets under the prudent investor rule.

(2) The trust describes the amount that shall or may be distributed to a beneficiary by referring to the trust's income.

(3) The trustee determines, after applying the rules in subdivision (a) of Section 16335, and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with subdivision (b) of Section 16335.

(b) A trustee may not make an adjustment between principal and income in any of the following circumstances:

(1) Where it would diminish the income interest in a trust (A) that requires all of the income to be paid at least annually to a spouse and (B) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part.

(2) Where it would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

(3) Where it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(4) Where it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are so set aside.

(5) Where possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual

would not be treated as the owner if the trustee did not possess the power to make an adjustment.

(6) Where possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment.

(7) Where the trustee is a beneficiary of the trust.

(c) Notwithstanding Section 15620, if paragraph (5), (6), or (7) of subdivision (b) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

(d) A trustee may release the entire power conferred by subdivision (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income in either of the following circumstances:

(1) If the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (1) to (6), inclusive, of subdivision (b).

(2) If the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subdivision (b).

(e) A release under subdivision (d) may be permanent or for a specified period, including a period measured by the life of an individual.

(f) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subdivision (a).

(g) In deciding whether and to what extent to exercise the power to make adjustments under this section, the trustee may consider, but is not limited to, any of the following:

(1) The nature, purpose, and expected duration of the trust.

(2) The intent of the settlor.

(3) The identity and circumstances of the beneficiaries.

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital.

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor.

(6) The net amount allocated to income under other statutes and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available.

(7) Whether and to what extent the trust gives the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(9) The anticipated tax consequences of an adjustment.

(h) Nothing in this section or in this chapter is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

16337. (a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:

(1) The name and mailing address of the trustee.

(2) The name and telephone number of a person who may be contacted for additional information.

(3) A description of the action proposed to be taken and an explanation of the reasons for the action.

(4) The time within which objections to the proposed action can be made, which shall be at least 30 days from the mailing of the notice of proposed action.

(5) The date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the

court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

16338. In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under Section 16336, the sole remedy is to direct, deny, or revise an adjustment between principal and income.

16339. This chapter applies to every trust or decedent's estate existing on or after January 1, 2000, except as otherwise expressly provided in the trust or will or in this chapter.

Article 3. Decedent's Estate or Terminating Income Interest

16340. After the decedent's death, in the case of a decedent's estate, or after an income interest in a trust ends, the following rules apply:

(a) If property is specifically given to a beneficiary, by will or trust, the fiduciary of the estate or of the terminating income interest shall distribute the net income and principal receipts to the beneficiary who is to receive the property, subject to the following rules:

(1) The net income and principal receipts from the specifically given property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether the amounts accrued or became due before, on, or after the decedent's death or an income interest in a trust ends, and by making a reasonable provision for amounts the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

(2) The fiduciary may not reduce income and principal receipts from the specifically given property on account of a payment described in Section 16370 or 16371, to the extent that the will, the trust, or Section 12002 requires payment from other property or to the extent that the fiduciary recovers the payment from a third person.

(b) The fiduciary shall distribute to a beneficiary who receives a pecuniary amount, whether outright or in trust, the interest or any other amount provided by the will, the trust, or Chapter 8 (commencing with Section 12000) of Part 10 of Division 7, from the

remaining net income determined under subdivision (c) or from principal to the extent that net income is insufficient.

(c) The fiduciary shall determine the remaining net income of the decedent's estate or terminating income interest as provided in this chapter and by doing the following:

(1) Including in net income all income from property used to discharge liabilities.

(2) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on death taxes, except that the fiduciary may pay these expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of these expenses from income will not cause the reduction or loss of the deduction.

(3) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the trust, or Division 10 (commencing with Section 20100).

(d) After distributions required by subdivision (b), the fiduciary shall distribute the remaining net income determined under subdivision (c) in the manner provided in Section 16341 to all other beneficiaries.

(e) For purposes of this section, a reference in Chapter 8 (commencing with Section 12000) of Part 10 of Division 7 to the date of the testator's death means the date of the settlor's death or of the occurrence of some other event on which the distributee's right to receive the gift depends.

16341. (a) Each beneficiary described in subdivision (d) of Section 16340 is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution dates and without reducing the values by any unpaid principal obligations.

(b) If a fiduciary does not distribute all of the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(c) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

Article 4. Apportionment at Beginning and End of Income Interest

16345. (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust at the following times:

(1) In the case of an asset that is transferred to a trust during the transferor's life, on the date it is transferred to the trust.

(2) In the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate, on the date of the testator's death.

(3) In the case of an asset that is transferred to a fiduciary by a third party because of the individual's death, on the date of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subdivision (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies, or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

16346. (a) A trustee shall allocate an income receipt or disbursement other than one to which subdivision (a) of Section 16340 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which Section 16350 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

16347. (a) For the purposes of this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal by the trust.

(b) Except as provided in subdivision (c), on the date when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the trust.

(c) If immediately before the income interest ends, the beneficiary under subdivision (b) has an unqualified power to revoke more than 5 percent of the trust, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(d) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment.

Article 5.1. Allocation of Receipts During Administration of Trust: Receipts From Entities

16350. (a) For the purposes of this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or decedent's estate to which Section 16351 applies, a business or activity to which Section 16352 applies, or an asset-backed security to which Section 16367 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate to principal the following receipts from an entity:

(1) Property other than money.

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

(3) Money received in total or partial liquidation of the entity.

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) For purposes of paragraph (3) of subdivision (c):

(1) Money is received in partial liquidation (A) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation, or (B) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as

shown by the entity's yearend financial statements immediately preceding the initial receipt.

(2) Money is not received in partial liquidation, nor may it be taken into account under clause (B) of paragraph (1), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary is required to pay on taxable income of the entity that distributes the money.

(e) A trustee may rely on a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

16351. A trustee shall allocate to income an amount received as a distribution of income from a trust or a decedent's estate (other than an interest in an investment entity) in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from the trust or estate.

16352. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or other activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and its other reasonably foreseeable needs, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or other activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business or other activity.

(c) Businesses and other activities for which a trustee may maintain separate accounting records include the following:

(1) Retail, manufacturing, service, and other traditional business activities.

(2) Farming.

(3) Raising and selling livestock and other animals.

(4) Managing rental properties.

(5) Extracting minerals and other natural resources.

(6) Timber operations.

(7) Activities to which Section 16366 applies.

Article 5.2. Allocation of Receipts During Administration of Trust: Receipts Not Normally Apportioned

16355. A trustee shall allocate to principal:

(a) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary.

(b) Subject to any contrary rules in this article and in Articles 5.1 (commencing with Section 16350) and 5.3 (commencing with Section 16360), money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit.

(c) Amounts recovered from third parties to reimburse the trust because of disbursements described in paragraph (7) of subdivision (a) of Section 16371 or for other reasons to the extent not based on the loss of income.

(d) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

(e) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income.

(f) Other receipts allocated to principal as provided in Article 5.3 (commencing with Section 16360).

16356. Unless the trustee accounts for receipts from rental property pursuant to Section 16352, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease, and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

16357. (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(b) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price, or its value when it is otherwise acquired, is less than its value at maturity, shall be allocated to principal. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess

of its purchase price, or its value when it is otherwise acquired, shall be allocated to income.

(c) This section does not apply to an obligation to which Section 16361, 16362, 16363, 16364, 16366, or 16367 applies.

16358. (a) Except as otherwise provided in subdivision (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to Section 16352, loss of profits from a business.

(c) This section does not apply to a contract to which Section 16361 applies.

Article 5.3. Allocation of Receipts During Administration of Trust: Receipts Normally Apportioned

16360. (a) If a trustee determines that an allocation between principal and income required by Section 16361, 16362, 16363, 16364, or 16367 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subdivision (b) of Section 16336 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subdivision (c) of Section 16336 and may be released for the reasons and in the manner provided in subdivisions (d) and (e) of Section 16336.

(b) An allocation is presumed to be insubstantial in either of the following cases:

(1) Where the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent.

(2) Where the value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

(c) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failure to make an allocation under this section.

16361. (a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including

a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subdivision, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which Section 16362 applies.

16362. (a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to Section 16361, resources subject to Section 16363, timber subject to Section 16364, an activity subject to Section 16366, an asset subject to Section 16367, or any asset for which the trustee establishes a reserve for depreciation under Section 16372.

(b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

16363. (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as a nominal bonus, nominal delay rental, or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent shall be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest in mineral or other natural resources not described in paragraph (1), (2), or (3), 90 percent of the net amount received shall be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, 90 percent of the amount shall be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

16364. (a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts as follows:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest.

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber.

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2).

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (1), (2), or (3).

(b) In determining net receipts to be allocated under subdivision (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

16365. (a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under Section 16336 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income or convert it into productive property or exercise the power under subdivision (a) of Section 16336 within a

reasonable time. The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subdivision (a), proceeds from the sale or other disposition of a trust asset are principal without regard to the amount of income the asset produces during any accounting period.

16366. (a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under Section 16352 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

16367. (a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which Section 16350 or 16361 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

Article 6. Allocation of Disbursements During Administration of Trust

16370. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (2) or (3) of subdivision (c) of Section 16340 applies:

(a) Except as otherwise ordered by the court, one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.

(b) Except as otherwise ordered by the court, one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

(c) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

(d) All recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

16371. (a) A trustee shall make the following disbursements from principal:

(1) Except as otherwise ordered by the court, the remaining one-half of the disbursements described in subdivisions (a) and (b) of Section 16370.

(2) Except as otherwise ordered by the court, all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale.

(3) Payments on the principal of a trust debt.

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property.

(5) Premiums paid on a policy of insurance not described in subdivision (d) of Section 16370 of which the trust is the owner and beneficiary.

(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

16372. (a) For purposes of this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer from income to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, under generally accepted accounting principles, but may not transfer any amount for depreciation under this section in any of the following circumstances:

(1) As to the portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary.

(2) During the administration of a decedent's estate.

(3) If the trustee is accounting under Section 16352 for the business or activity in which the asset is used.

(c) An amount transferred from income to principal need not be held as a separate fund.

16373. (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subdivision (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs.

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments.

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions.

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments.

(5) Disbursements described in paragraph (7) of subdivision (a) of Section 16371.

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subdivision (a).

16374. (a) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately as follows:

(1) From income to the extent that receipts from the entity are allocated to income.

(2) From principal to the extent that both of the following apply:

(A) Receipts from the entity are allocated to principal.

(B) The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (1) and subparagraph (A).

(d) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

16375. (a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

(1) Elections and decisions, other than those described in subdivision (b), that the fiduciary makes from time to time regarding tax matters.

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust.

(3) The ownership by a decedent's estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by a decedent's estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

SEC. 6. Section 17351 of the Probate Code is amended to read:

17351. (a) If any of the trustees of a trust described in Section 17350 is a trust company, the trust shall be removed from continuing court jurisdiction as provided in this section. Within six months after the initial funding of the trust, the trustee shall give a notice of removal of the trust from continuing court jurisdiction to each beneficiary. Notice of removal shall be sent by registered or certified mail or by first-class mail, but notice sent by first-class mail is effective only if an acknowledgment of receipt of notice is signed by the beneficiary and returned to the trustee.

(b) The notice of removal of the trust from continuing court jurisdiction shall contain the following:

(1) A statement that as of January 1, 1983, the law was changed to remove the necessity for continuing court jurisdiction over the trust.

(2) A statement that Section 17200 of the Probate Code gives any beneficiary the right to petition a court to determine important matters relating to the administration of the trust.

(3) A copy of the text of Sections 17200 and 17201.

(4) A statement that each income beneficiary, as defined in Section 16325, is entitled to an annual statement of the principal and income receipts and disbursements of the trust and that any other beneficiary is entitled to such information upon written request to the trustee.

(5) The name and location of the court in the county in which it is appropriate to file a petition pursuant to Section 17200, the name and location of the court that had jurisdiction over the administration of the decedent's estate, and a statement that it is appropriate to file a petition pursuant to Section 17200 with either court.

(c) The trustee shall file with the court that had jurisdiction over the administration of the decedent's estate proof of giving notice under this section within seven months after the initial funding of the trust.

SEC. 7. Section 21524 of the Probate Code is amended to read:

21524. If a marital deduction gift is made in trust, in addition to the other provisions of this chapter, each of the following provisions also applies to the marital deduction trust:

(a) The transferor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to subdivision (d), the transferor's spouse is entitled to all of the income of the marital deduction property not less frequently than annually, as long as the spouse is alive.

(c) The transferor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or to convert it into productive property within a reasonable time.

(d) Notwithstanding Section 16347, in the case of qualified terminable interest property under Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code, on termination of the interest of the transferor's spouse in the trust all of the remaining accrued or undistributed income shall pass to the estate of the transferor's spouse, unless the instrument provides a different disposition that qualifies for the marital deduction.

CHAPTER 146

An act to amend Section 2815.1 of the Business and Professions Code, to repeal Section 95030 of the Government Code, to amend Sections 1179.3, 1276.5, 123870, 123900, 123940, 124250, and 128405 of, and to add Chapter 1.5 (commencing with Section 150) to Part 1 of Division 1 of, to add Chapter 1.5 (commencing with Section 120390) to Part 2 of Division 105 of, and to add and repeal Article 1.5 (commencing with Section 104160) to Chapter 2 of Part 1 of Division 103 of, the Health and Safety Code, to amend Sections 12693.02, 12693.06, 12693.21, 12693.41, 12693.43, 12693.62, 12693.70, 12693.73, and 12693.91 of, to amend and renumber Section 12963.96 of, and to add Sections 12393.17, 12693.69, and 12693.76 to, the Insurance Code, to amend Section 17273 of the Revenue and Taxation Code, and to amend Sections 4640.6, 4647, 4681.3, 14005.30, 14007.5, 14053, 14067, 14085.7, 14085.8, 14094.3, 14105.31, 14105.33, 14105.35, 14105.37, 14105.38, 14105.39, 14105.4, 14105.405, 14105.41, 14105.42, 14105.91, 14105.915, 14105.916, 14105.981, 14110.6, 14110.7, 14132, 14132.22, 14163, 16809, 18993.9, 24001, and 24005 of, to add Sections 4441.5, 5701.1, 6501, 14007.65, 14007.7, 14008.85, 14011.15, 14018.5, 14053.1, 14087.301, 14107.11, 24003.2, 24003.5, and 24007.5 to, to add Article 1.3 (commencing with Section 14043) to Chapter 7 of Part 3 of Division 9 of, and to repeal and add Section 24027 of, the Welfare and Institutions Code, relating to health care, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 2815.1 of the Business and Professions Code is amended to read:

2815.1. As provided in subdivision (d) of Section 2815, the Board of Registered Nursing shall collect an additional five dollar ($5) assessment at the time of the biennial licensure renewal. This amount shall be credited to the Registered Nurse Education Fund. This assessment is separate from those fees prescribed in Section 2815.

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. 2. Section 95030 of the Government Code is repealed.

SEC. 3. Chapter 1.5 (commencing with Section 150) is added to Part 1 of Division 1 of the Health and Safety Code, to read:

CHAPTER 1.5. MULTICULTURAL HEALTH

150. The Legislature finds and declares all of the following:

(a) The health status of California's racial and ethnic communities is poor relative to the health status of the white population.

(b) Of the estimated 24 percent of Californians without health insurance, approximately 81 percent are from racial and ethnic communities.

(c) Of the uninsured in California, an estimated 38 percent are Latino, 24 percent are Asian and Pacific Islander, and 19 percent are African-American.

(d) Racial and ethnic communities suffer from various infections and communicable diseases at higher rates than the white population, and experience increased mortality from more preventable disease relative to the white population. For example, the President's Racial and Ethnic Health Disparities Initiative recognized that infant mortality rates are 2.5 times higher for African-Americans and 1.5 times higher for native Americans than for the white population. African men under 65 years of age suffer from prostate cancer at nearly five times the rate of white men and Vietnamese women suffer from cervical cancer at nearly five times the rate of white women. Latinos suffer from stomach cancer at two to three times the rate of the white population, and African-American men suffer from heart disease at nearly twice the rate of white men. Native Americans suffer from diabetes at nearly three times the average rate of the white population, while African-Americans suffer 70 percent higher rates of diabetes than the white population.

(e) Efforts to reduce and eliminate racial and ethnic disparities in health status have received scant attention, both in terms of funding for prevention and treatment services, as well as research.

(f) Program planning and implementation efforts to reduce these health disparities have been neither inclusive of racial and ethnic communities nor responsive to the needs of these communities.

151. (a) The Office of Multicultural Health is hereby established within the State Department of Health Services.

(b) For purposes of this chapter:

(1) "Department" means the State Department of Health Services.

(2) "Office" means the Office of Multicultural Health.

152. (a) The office shall do all of the following:

(1) Perform strategic planning within the department to develop departmentwide plans for implementation of goals and objectives to close the gaps in health status and access to care among the state's diverse racial and ethnic communities.

(2) Conduct departmental policy analysis on specific issues related to multicultural health.

(3) Coordinate pilot projects and planning projects funded by the state that are related to improving the effectiveness of services to ethnic and racial communities.

(4) Identify the unnecessary duplication of services and future service needs.

(5) Communicate and disseminate information and perform a liaison function within the department and to providers of health, social, educational, and support services to racial and ethnic communities. The office shall consult regularly with representatives from diverse racial and ethnic communities, including health providers, advocates, and consumers.

(6) Perform internal staff training, an internal assessment of cultural competency, and training of health care professionals to ensure more linguistically and culturally competent care.

(7) Serve as a resource for ensuring that programs keep data and information regarding ethnic and racial health statistics, strategies and programs that address multicultural health issues, including, but not limited to, infant mortality, cancer, cardiovascular disease, diabetes, human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), child and adult immunization, asthma, unintentional and intentional injury, and obesity, as well as issues that impact the health of racial and ethnic communities, including substance abuse, mental health, housing, teenage pregnancy, environmental disparities, immigrant and migrant health, and health insurance and delivery systems.

(8) Encourage innovative responses by public and private entities that are attempting to address multicultural health issues.

(9) Provide technical assistance to counties, other public entities, and private entities seeking to obtain funds for initiatives in multicultural health, including identification of funding sources and assistance with writing grants.

(b) Notwithstanding Section 7550.5 of the Government Code, the office shall biennially prepare and submit a report to the Legislature on the status of the activities required by this chapter.

SEC. 4. Section 1179.3 of the Health and Safety Code is amended to read:

1179.3. (a) (1) The Rural Health Policy Council shall develop and administer a competitive grants program for projects located in rural areas of California.

(2) The Rural Health Policy Council shall define "rural area" for the purposes of this section after receiving public input and upon

recommendation of the Interdepartmental Rural Health Coordinating Committee and the Rural Health Programs Liaison.

(3) The purpose of the grants program shall be to fund innovative, collaborative, cost-effective, and efficient projects that pertain to the delivery of health and medical services in rural areas of the state.

(4) The Rural Health Policy Council shall develop and establish uses for the funds to fund special projects that alleviate problems of access to quality health care in rural areas and to compensate public and private health care providers associated with direct delivery of patient care. The funds shall be used for medical and hospital care and treatment of patients who cannot afford to pay for services and for whom payment will not be made through private or public programs.

(5) The Office of Statewide Health Planning and Development shall administer the funds appropriated by the Legislature for purposes of this section. Entities eligible for these funds shall include rural health providers served by the programs operated by the departments represented on the Rural Health Policy Council, which include the State Department of Alcohol and Drug Programs, the Emergency Medical Services Authority, the State Department of Health Services, the State Department of Mental Health, the Office of Statewide Health Planning and Development, and the Managed Risk Medical Insurance Board. The grant funds shall be used to expand existing services or establish new services and shall not be used to supplant existing levels of service. Funds appropriated by the Legislature for this purpose may be expended in the fiscal year of the appropriation or the subsequent fiscal year.

(b) The Rural Health Policy Council shall establish the criteria and standards for eligibility to be used in requests for proposals or requests for application, the application review process, determining the maximum amount and number of grants to be awarded, preference and priority of projects, compliance monitoring, and the measurement of outcomes achieved after receiving comment from the public at a meeting held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(c) The Office of Statewide Health Planning and Development shall periodically report to the Rural Health Policy Council on the status of the funded projects. This information shall also be available at the public meetings.

SEC. 4.5. 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. However, notwithstanding Section 14110.7 or any other provision of law, commencing January 1, 2000, the minimum

number of actual nursing hours per patient required in a skilled nursing facility shall be 3.2 hours.

(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, and except that nursing hours for skilled nursing facilities means the actual hours of work, without doubling the hours performed per patient day by registered nurses and licensed vocational nurses.

(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. 5. Article 1.5 (commencing with Section 104160) is added to Chapter 2 of Part 1 of Division 103 of the Health and Safety Code, to read:

Article 1.5. Breast Cancer Treatment Program

104160. The department shall award a contract to provide breast cancer treatment to a bidder that is a nonprofit organization established under Section 501(c)(3) of the federal Internal Revenue Code and that meets the following additional eligibility criteria:

(a) The organization has at least two consecutive years of successful administration of a breast cancer treatment program, or the equivalent, operated on a statewide level, or servicing a population of at least 500 patients.

(b) The organization has experience operating a program dedicated to providing services to residents of California diagnosed with primary breast cancer, who are 18 years of age or older, at or below 200 percent of the federal poverty level, and who are uninsured or underinsured.

(c) The organization has operated the treatment program with administrative costs no higher than 10 percent of appropriated program funds, or can demonstrate the ability to do so.

(d) The organization has demonstrated ability to accomplish recruitment and commitment of breast cancer treatment providers to work with the program to provide care at or below established statewide Medi-Cal base rates of reimbursement.

104161. For purposes of this chapter, breast cancer treatment shall include, but shall not be limited to, lumpectomy, mastectomy, chemotherapy, hormone therapy, radiotherapy, reconstructive surgery, and breast implant surgery.

104162. Treatment under this chapter shall be provided to uninsured and underinsured women and men with incomes at or below 200 percent of the federal poverty level.

104163. The department shall contract for breast cancer treatment services only at the level of funding budgeted from state and other sources during a fiscal year in which the Legislature has appropriated funds to the department for this purpose. The funds appropriated shall be used to match any funding from non-General Fund sources, including, but not limited to, public nonprofit foundations.

104164. This article shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2000, deletes or extends that date.

SEC. 5.5. Chapter 1.5 (commencing with Section 120390) is added to Part 2 of Division 105 of the Health and Safety Code, to read:

CHAPTER 1.5. IMMUNIZATION OF COLLEGE-AGE STUDENTS

120390. The department, in consultation with the Trustees of the California State University, and the Regents of the University of California, shall adopt and enforce all regulations necessary to carry out this chapter.

120390.5. (a) Except as provided in subdivisions (b), (c), and (d), on or after January 1, 2000, the Trustees of the California State University, and the Regents of the University of California shall require the first-time enrollees at those institutions who are 18 years of age or younger to provide proof of full immunization against the hepatitis B virus prior to enrollment.

(b) A person who has not been fully immunized against the hepatitis B virus, as required by subdivision (a), may be admitted by the governing body of any of the institutions of higher education to which subdivision (a) is applicable on condition that, within a designated time period, the person will provide proof of full immunization against hepatitis B.

(c) Immunization of a person shall not be required for admission to an institution of higher education to which subdivision (a) is applicable if any of the following persons files with the governing body of the educational institution a letter or affidavit stating that the immunization is contrary to the beliefs of either of the following:

(1) The parent, guardian, or adult who has assumed responsibility for the care and custody of the person seeking admission, if that applicant is a minor who is not emancipated or who is 17 years of age or younger.

(2) The person seeking admission, if that applicant is an emancipated minor or is 18 years of age.

(d) If a person seeking enrollment in an institution of higher education to which subdivision (a) is applicable, or the parent or guardian of a person seeking enrollment, files with the governing body a written statement by a physician and surgeon that the physical condition of the person or medical circumstances relating to the person are such that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization, that person shall be exempt from the requirements of subdivision (a).

120390.7. No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

SEC. 6. Section 123870 of the Health and Safety Code is amended to read:

123870. (a) The department shall establish standards of financial eligibility for treatment services under the California Children's Services Program (CCS program).

(1) Financial eligibility for treatment services under this program shall be limited to persons in families with an adjusted gross income of forty thousand dollars ($40,000) or less in the most recent tax year, as calculated for California state income tax purposes. If a person is enrolled in the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code), the financial documentation required for that program in Section 2699.6600 of Title 10 of the California Code of Regulations may be used instead of the person's California state income tax return. However, the director may authorize treatment services for persons in families with higher incomes if the estimated cost of care to the family in one year is expected to exceed 20 percent of the family's adjusted gross income.

(2) Children enrolled in the Healthy Families Program who have a CCS program eligible medical condition under Section 123830, and whose families do not meet the financial eligibility requirements of paragraph (1), shall be deemed financially eligible for CCS program benefits.

(b) Necessary medical therapy treatment services under the California Children's Services Program rendered in the public schools shall be exempt from financial eligibility standards and enrollment fee requirements for the services when rendered to any handicapped child whose educational or physical development would be impeded without the services.

(c) All counties shall use the uniform standards for financial eligibility and enrollment fees established by the department. All enrollment fees shall be used in support of the California Children's Services Program.

(d) Annually, every family with a child eligible to receive services under this article shall pay a fee of twenty dollars ($20), that shall be in addition to any other program fees for which the family is liable. This assessment shall not apply to any child who is eligible for full scope Medi-Cal benefits without a share of cost, for children receiving therapy through the California Children's Services Program as a related service in their individualized education plans, for children from families having incomes of less than 100 percent of the federal poverty level, or for children covered under the Healthy Families Program.

SEC. 7. Section 123900 of the Health and Safety Code is amended to read:

123900. (a) Beginning September 1, 1991, in addition to any other standards of eligibility pursuant to this article, each family with a child otherwise eligible to receive services under this article shall pay an annual enrollment fee as a requirement for eligibility for services, except as specified in subdivision (f).

(b) The department shall determine the annual enrollment fee, that shall be a sliding fee scale based upon family size and income, and

shall be adjusted by the department to reflect changes in the federal poverty level.

(c) "Family size" shall include the child, his or her natural or adoptive parents, siblings, and other family members who live together and whose expenses are dependent upon the family income.

(d) "Family income" for purposes of this article, shall include the total gross income, or their equivalents, of the child and his or her natural or adoptive parents.

(e) Payment of the enrollment fee is a condition of program participation. The enrollment fee is independent of any other financial obligation to the program.

(f) The enrollment fee shall not be charged in any of the following cases:

(1) The only services required are for diagnosis to determine eligibility for services, or are for medically necessary therapy pursuant to Section 123875.

(2) The child is otherwise eligible to receive services and is eligible for full Medi-Cal benefits at the time of application or reapplication.

(3) The family of the child otherwise eligible to receive services under this article has a gross annual income of less than 200 percent of the federal poverty level.

(4) The family of a child otherwise eligible to receive services under this article who is enrolled in the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code).

(g) Failure to pay or to arrange for payment of the enrollment fee within 60 days of the due date shall result in disenrollment and ineligibility for coverage of treatment services 60 days after the due date of the required payment.

(h) The county shall apply the enrollment fee scale established by the department and shall collect the enrollment fee. The county may arrange with the family for periodic payment during the year if a lump-sum payment will be a hardship for the family. The agency director of California Children's Services may, on a case-by-case basis, waive or reduce the amount of a family's enrollment fee if, in the director's judgment, payment of the fee will result in undue hardship.

(i) By thirty days after the effective date of this section or August 1, 1991, whichever is later, the department shall advance to each county, as a one-time startup amount, five dollars and fifty cents ($5.50) for each county child who was receiving services under this article on June 30, 1990, and who was not a Medi-Cal beneficiary. This one-time payment shall be in addition to the 4.1 percent of the gross total expenditures for diagnoses, treatment, and therapy by counties allowed under subdivision (c) of Section 123955.

(j) Each county shall submit to the state, as part of its quarterly claim for reimbursement, an accounting of all revenues due and revenues collected as enrollment fees.

SEC. 8. Section 123940 of the Health and Safety Code is amended to read:

123940. (a) (1) Annually, the board of supervisors shall appropriate a sum of money for services for handicapped children of the county, including diagnosis, treatment, and therapy services for physically handicapped children in public schools, equal to 25 percent of the actual expenditures for the county program under this article for the 1990–91 fiscal year, except as specified in paragraph (2).

(2) If the state certifies that a smaller amount is needed in order for the county to pay 25 percent of costs of the county's program from this source. The smaller amount certified by the state shall be the amount that the county shall appropriate.

(b) In addition to the amount required by subdivision (a), the county shall allocate an amount equal to the amount determined pursuant to subdivision (a) for purposes of this article from revenues allocated to the county pursuant to Chapter 6 (commencing with Section 17600) of Division 9 of the Welfare and Institutions Code.

(c) (1) The state shall match county expenditures for this article from funding provided pursuant to subdivisions (a) and (b).

(2) County expenditures shall be waived for payment of services for children who are eligible pursuant to paragraph (2) of subdivision (a) of Section 123870.

(d) The county may appropriate and expend moneys in addition to those set forth in subdivision (a) and (b) and the state shall match the expenditures, on a dollar-for-dollar basis, to the extent that state funds are available for this article.

(e) Nothing in this section shall require the county to expend more than the amount set forth in subdivision (a) plus the amount set forth in subdivision (b) nor shall it require the state to expend more than the amount of the match set forth in subdivision (c).

SEC. 9. Section 124250 of the Health and Safety Code is amended to read:

124250. (a) The following definitions shall apply for purposes of this section:

(1) "Domestic violence" means the infliction or threat of physical harm against past or present adult or adolescent female intimate partners, and shall include physical, sexual, and psychological abuse against the woman, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over, that woman.

(2) "Shelter-based" means an established system of services where battered women and their children may be provided safe or confidential emergency housing on a 24-hour basis, including, but not limited to, hotel or motel arrangements, haven, and safe houses.

(3) "Emergency shelter" means a confidential or safe location that provides emergency housing on a 24-hour basis for battered women and their children.

(b) The Maternal and Child Health Branch of the State Department of Health Services shall administer a comprehensive shelter-based services grant program to battered women's shelters pursuant to this section.

(c) The Maternal and Child Health Branch shall administer grants, awarded as the result of a request for application process, to battered women's shelters that propose to maintain shelters or services previously granted funding pursuant to this section, to expand existing services or create new services, and to establish new battered women's shelters to provide services, in any of the following four areas:

(1) Emergency shelter to women and their children escaping violent family situations.

(2) Transitional housing programs to help women and their children find housing and jobs so that they are not forced to choose between returning to a violent relationship or becoming homeless. The programs may offer up to 18 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

(3) Legal and other types of advocacy and representation to help women and their children pursue the appropriate legal options.

(4) Other support services for battered women and their children.

(d) In implementing the grant program pursuant to this section, the State Department of Health Services shall consult with an advisory council, to remain in existence until January 1, 2003. The council shall be composed of not to exceed 13 voting members and two nonvoting members appointed as follows:

(1) Seven members appointed by the Governor.

(2) Three members appointed by the Speaker of the Assembly.

(3) Three members appointed by the Senate Committee on Rules.

(4) Two nonvoting ex officio members who shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with, and participate in the activities of, the council to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

The membership of the council shall consist of domestic violence advocates, battered women service providers, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence advocates or battered women service providers from organizations such as the California Alliance Against Domestic Violence.

It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state.

(e) The department shall collaborate closely with the council in the development of funding priorities, the framing of the Request for Proposals, and the solicitation of proposals.

(f) (1) The Maternal and Child Health Branch of the State Department of Health Services shall administer grants, awarded as the result of a request for application process, to agencies to conduct demonstration projects to serve battered women, including, but not limited to, creative and innovative service approaches, such as community response teams and pilot projects to develop new interventions emphasizing prevention and education, and other support projects identified by the advisory council.

(2) For purposes of this subdivision, "agency" means a state agency, a local government, a community-based organization, or a nonprofit organization.

(g) It is the intent of the Legislature that services funded by this program include services in underserved and ethnic and racial communities. Therefore, the Maternal and Child Health Branch of the State Department of Health Services shall do all of the following:

(1) Fund shelters pursuant to this section that reflect the ethnic, racial, economic, cultural, and geographic diversity of the state.

(2) Target geographic areas and ethnic and racial communities of the state whereby, based on a needs assessment, it is determined that no shelter-based services exist or that additional resources are necessary.

(h) The director may award additional grants to shelter-based agencies when it is determined that there exists a critical need for shelter or shelter-based services.

(i) As a condition of receiving funding pursuant to this section, battered women's shelters shall do all of the following:

(1) Provide matching funds or in-kind contributions equivalent to not less than 20 percent of the grant they would receive. The matching funds or in-kind contributions may come from other governmental or private sources.

(2) Ensure that appropriate staff and volunteers having client contact meet the definition of "domestic violence counselor" as specified in subdivision (a) of Section 1037.1 of the Evidence Code. The minimum training specified in paragraph (2) of subdivision (a) of Section 1037.1 of the Evidence Code shall be provided to those staff and volunteers who do not meet the requirements of paragraph (1) of subdivision (a) of Section 1037.1 of the Evidence Code.

SEC. 10. Section 128405 of the Health and Safety Code is amended to read:

128405. This article shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 11. Section 12693.02 of the Insurance Code is amended to read:

12693.02. (a) "Applicant" means a person over the age of 18 years who is a natural or adoptive parent; a legal guardian; or a caretaker relative, foster parent, or stepparent with whom the child resides, who applies for coverage under the program on behalf of a child.

(b) "Applicant" also means any of the following:

(1) A person 18 years of age who is applying on his or her own behalf for coverage under the program.

(2) A person who is under 18 years of age and is an emancipated minor who is applying on his or her own behalf for coverage under the program.

(3) A minor who is not living in the home of a natural or adoptive parent, a legal guardian, or a caretaker relative, foster parent or stepparent, who is applying on his or her own behalf for coverage under the program.

(4) A minor who applies for coverage under the program on behalf of his or her child.

SEC. 12. Section 12693.06 of the Insurance Code is amended to read:

12693.06. "Family contribution" means the cost to an applicant to enable herself or himself or an eligible child or children to enroll in and participate in the program. Family contribution does not include copayments for insured services. The family contribution may be paid by a family contribution sponsor pursuant to Section 12693.17.

SEC. 13. Section 12693.17 is added to the Insurance Code, to read:

12693.17. "Family contribution sponsor" means a person or entity that pays the family contribution on behalf of an applicant for the period of 12 months from the month eligibility is established; and, notwithstanding Section 12693.70, the payment for 12 months is made with the application.

SEC. 14. Section 12693.21 of the Insurance Code is amended to read:

12693.21. The board may do all of the following consistent with the standards in this part:

(a) Determine eligibility criteria for the program.

(b) Determine the participation requirements of applicants, subscribers, purchasing credit members, and participating health, dental, and vision plans.

(c) Determine when subscribers' coverage begins and the extent and scope of coverage.

(d) Determine family contribution amount schedules and collect the contributions.

(e) Determine who may be a family contribution sponsor and provide a mechanism for sponsorship.

(f) Provide or make available subsidized coverage through participating health, dental, and vision plans, in a purchasing pool, which may include the use of a purchasing credit mechanism,

through supplemental coverage, or through coordination with other state programs.

(g) Provide for the processing of applications, the enrollment of subscribers, and the distribution of purchasing credits.

(h) Determine and approve the benefit designs and copayments required by health, dental, or vision plans participating in the purchasing pool component program.

(i) Approve those health plans eligible to receive purchasing credits.

(j) Enter into contracts.

(k) Sue and be sued.

(*l*) Employ necessary staff.

(m) Authorize expenditures from the fund to pay program expenses that exceed subscriber contributions, and to administer the program as necessary.

(n) Maintain enrollment and expenditures to ensure that expenditures do not exceed amounts available in the Healthy Families Fund and if sufficient funds are not available to cover the estimated cost of program expenditures, the board shall institute appropriate measures to limit enrollment.

(o) Issue rules and regulations, as necessary. Until January 1, 2000, any rules and regulations issued pursuant to this subdivision may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(p) Exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed by this part.

SEC. 15. Section 12693.41 of the Insurance Code is amended to read:

12693.41. (a) Upon the effective date of coverage of a child eligible for the program, the board shall arrange for payment of providers who participate in the Child Health and Disability Prevention Program pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, for well-child health assessments, immunizations, and initial treatment provided up to 90 days prior to the effective date of coverage.

(b) The board shall pay only for those services that are eligible for federal financial participation under Section 2105 of Title XXI of the Social Security Act and that are approved in the required state plan under that title, except as specified in Section 12693.76.

(c) (1) Child Health and Disability Prevention Program providers shall submit charges for the services under subdivision (a)

on the form or in the format specified by the department for the Child Health and Disability Prevention Program. Those providers shall be reimbursed at the rates established for these services by the Child Health and Disability Prevention Program once coverage under the program is established.

(2) Those providers shall submit charges for services reimbursable under Medi-Cal on the form or in the format specified by the department for Medi-Cal. Those providers shall be reimbursed at the rates established for these services by Medi-Cal once coverage under Medi-Cal is established.

(d) (1) The board may use the state fiscal intermediary for medicaid to process the payments authorized in subdivision (a).

(2) The board shall be exempt from the requirements of Chapter 7 (commencing with Section 11700) of Division 3 of Title 2 of the Government Code and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code as those requirements apply to the use of contractual claims processing services by the state fiscal intermediary.

SEC. 16. Section 12693.43 of the Insurance Code is amended to read:

12693.43. (a) Applicants applying to the purchasing pool shall agree to pay family contributions, unless the applicant has a family contribution sponsor. Family contribution amounts consist of the following two components:

(1) The flat fees described in subdivision (b) or (d).

(2) Any amounts that are charged to the program by participating health, dental, and vision plans selected by the applicant that exceed the cost to the program of the highest cost Family Value Package in a given geographic area.

(b) In each geographic area the board shall designate one or more Family Value Packages for which the required total family contribution is:

(1) Seven dollars ($7) per child with a maximum required contribution of fourteen dollars ($14) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Nine dollars ($9) per child with a maximum required contribution of twenty-seven dollars ($27) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level.

(c) Combinations of health, dental, and vision plans that are more expensive to the program than the highest cost Family Value Package may be offered to and selected by applicants. However, the cost to the program of those combinations that exceeds the price to the program of the highest cost Family Value Package shall be paid by the applicant as part of the family contribution.

(d) The board shall provide a family contribution discount to those applicants who select the health plan in a geographic area

which has been designated as the Community Provider Plan. The discount shall reduce the portion of the family contribution described in subdivision (b) to the following:

(1) A family contribution of four dollars ($4) per child with a maximum required contribution of eight dollars ($8) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Six dollars ($6) per child with a maximum required contribution of eighteen dollars ($18) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level.

(e) Applicants, but not family contribution sponsors, who pay three months of required family contributions in advance shall receive the fourth consecutive month of coverage with no family contribution required.

(f) It is the intent of the Legislature that the family contribution amounts described in this section comply with the premium cost sharing limits contained in Section 2103 of Title XXI of the Social Security Act. If the amounts described in subdivision (a) are not approved by the federal government, the board may adjust these amounts to the extent required to achieve approval of the state plan.

SEC. 17. Section 12693.62 of the Insurance Code is amended to read:

12693.62. Notwithstanding any other provision of law, for a subscriber who is determined by the California Children's Services Program to be eligible for benefits under the program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, a participating plan shall not be responsible for the provision of, or payment for, the particular services authorized by the California Children's Services Program for the particular subscriber for the treatment of a California Children's Services Program eligible medical condition. Participating plans shall refer a child who they reasonably suspect of having a medical condition that is eligible for services under the California Children's Services Program to the California Children's Services Program. The California Children's Services Program shall provide case management and authorization of services if the child is found to be medically eligible for the California Children's Services Program. Diagnosis and treatment services that are authorized by the California Children's Services Program shall be performed by paneled providers for that program and approved special care centers of that program in accordance with treatment plans approved by the California Children's Services Program. All other services provided under the participating plan shall be available to the subscriber.

SEC. 18. Section 12693.69 is added to the Insurance Code, to read:

12693.69. A child enrolled in the Healthy Families Program who has a medical condition that is eligible for services pursuant to the

California Children's Services Program, and whose family is not financially eligible for the California Children's Services Program, shall have the medically necessary treatment services for their California Children's Services Program eligible medical condition authorized and paid for by the California Children's Services Program. County expenditures for the payment of services for the child shall be waived and these expenditures shall be paid for by the state from Title XXI funds that are applicable and state general funds.

SEC. 19. Section 12693.70 of the Insurance Code is amended to read:

12693.70. To be eligible to participate in the program, an applicant shall meet all of the following requirements:

(a) Be an applicant applying on behalf of an eligible child, which means a child who is all of the following:

(1) Less than 19 years of age. An application may be made on behalf of a child not yet born up to three months prior to the expected date of delivery. Coverage shall begin as soon as administratively feasible, as determined by the board, after the board receives notification of the birth. However, no child less than 12 months of age shall be eligible for coverage until 90 days after the enactment of the Budget Act of 1999.

(2) Not eligible for no-cost full-scope Medi-Cal or Medicare at the time of application.

(3) In compliance with Sections 12693.71 and 12693.72.

(4) A child who meets citizenship and immigration status requirements that are applicable to persons participating in the program established by Title XXI of the Social Security Act, except as specified in Section 12693.76.

(5) A resident of the State of California pursuant to Section 244 of the Government Code; or, if not a resident pursuant to Section 244 of the Government Code, is physically present in California and entered the state with a job commitment or to seek employment, whether or not employed at the time of application to or after acceptance in, the program.

(6) (A) In a family with an annual or monthly household income equal to or less than 200 percent of the federal poverty level.

(B) All income over 200 percent of the federal poverty level but less than or equal to 250 percent of the federal poverty level shall be disregarded in calculating annual or monthly household income.

(C) In a family with an annual or monthly household income greater than 250 percent of the federal poverty level, any income deduction that is applicable to a child under Medi-Cal shall be applied in determining the annual or monthly household income. If the income deductions reduce the annual or monthly household income to 250 percent or less of the federal poverty level, subparagraph (B) shall be applied.

(b) If the applicant is applying for the purchasing pool, and does not have a family contribution sponsor the applicant shall pay the first

month's family contribution and agree to remain in the program for six months, unless other coverage is obtained and proof of the coverage is provided to the program.

(c) An applicant shall enroll all of the applicant's eligible children in the program.

SEC. 20. Section 12693.73 of the Insurance Code is amended to read:

12693.73. Notwithstanding any other provision of law, children excluded from coverage under Title XXI of the Social Security Act are not eligible for coverage under the program, except as specified in Section 12693.76.

SEC. 21. Section 12693.76 is added to the Insurance Code, to read:

12693.76. Notwithstanding any other provision of law, a child who is a qualified alien as defined in Section 1641 of Title 8 of the United States Code Annotated shall not be determined ineligible solely on the basis of his or her date of entry into the United States. For the 1999–2000 fiscal year, these children shall be allowed to participate in the Healthy Families Program for a period of 12 months from the effective date that eligibility is established, whether or not federal financial participation is available for services provided to them. For subsequent fiscal years, these children may only participate in the Healthy Families Program upon the state receiving federal matching funds for them under the program.

SEC. 22. Section 12693.91 of the Insurance Code is amended to read:

12693.91. (a) The State Department of Health Services, in conjunction with the Managed Risk Medical Insurance Board, the County Medical Services Program board, and the Rural Health Policy Council, may develop and administer up to five demonstration projects in rural areas that are likely to contain a significant level of uninsured children, including seasonal and migratory worker dependents. In addition to any other funds provided pursuant to this section the grants for demonstration projects may include funds pursuant to subdivision (d).

(b) The purpose of the demonstration projects shall be to fund rural collaborative health care networks to alleviate unique problems of access to health care in rural areas.

(c) The State Department of Health Services, in conjunction with the Managed Risk Medical Insurance Board and Rural Health Policy Council, shall establish the criteria and standards for eligibility to be used in requests for proposals or requests for application, the application review process, determining the maximum amount and number of grants to be awarded, preference and priority of projects, and compliance monitoring after receiving comment from the public.

(d) The grants may include funds for purchasing equipment, making capital expenditures, and providing infrastructure, including, but not limited to, salaries and payment of leaseholds. The

funds under this subdivision may only be awarded to qualified eligible health care entities as determined by the State Department of Health Services. Title to any equipment or capital improvement purchased or acquired with grant funds shall vest in the grantee for the public good and not the state. Capital expenditures shall not include the acquisition of land. Notwithstanding subdivision (e), this subdivision shall be implemented only when funds are appropriated in the annual Budget Act or another statute to fund the cost of implementing this subdivision.

(e) This section shall only become operative upon federal approval of the state plan or subsequent amendments for the program and approval of federal financial participation.

(f) This section shall become inoperative on July 1, 2003.

SEC. 23. Section 12963.96 of the Insurance Code is amended and renumbered to read:

12693.96. (a) There is hereby created in the State Treasury the Healthy Families Fund which is, notwithstanding Section 13340 of the Government Code, continuously appropriated to the board for the purposes specified in this part.

(b) The board shall authorize the expenditure from the fund of any state funds, federal funds, or family contributions deposited into the fund. This shall include the authority for the board to authorize the State Department of Health Services to transfer funds appropriated to the department for the program to the Healthy Families Fund, and to also deposit those funds in, and to disburse those funds from, the Healthy Families Fund.

(c) Notwithstanding any other provision of law, this part shall be implemented only if, and to the extent that, as provided under Title XXI of the Social Security Act, federal financial participation is available and state plan approval is obtained, except as specified in Section 12693.76.

(d) Nothing in this part is intended to establish an entitlement for individual coverage.

SEC. 23.5. Section 17273 of the Revenue and Taxation Code is amended to read:

17273. For each taxable year beginning on or after January 1, 1999, Section 162(*l*)(1) of the Internal Revenue Code, relating to applicable percentage, is modified to provide that Section 2002 of the Tax and Trade Relief Extension Act of 1998 (P.L. 105-277), relating to phase in of a 100-percent deduction for health insurance, shall apply.

SEC. 24. Section 4441.5 is added to the Welfare and Institutions Code, to read:

4441.5. The State Department of Developmental Services shall develop policies and procedures, by no later than 30 days following the effective date of the Budget Act of 1999, at each developmental center, to notify appropriate law enforcement agencies in the event of a forensic client walkaway or escape. Local law enforcement

agencies, including local police and county sheriff's departments, shall review the policies and procedures prior to final implementation by the department.

SEC. 25. Section 4640.6 of the Welfare and Institutions Code is amended to read:

4640.6. (a) In approving regional center contracts, the department shall ensure that regional center staffing patterns demonstrate that direct service coordination are the highest priority.

(b) Contracts between the department and regional centers shall require that regional centers implement an emergency response system that ensures that a regional center staff person will respond to a consumer, or individual acting on behalf of a consumer, within two hours of the time an emergency call is placed. This emergency response system shall be operational 24 hours per day, 365 days per year.

(c) Contracts between the department and regional centers shall require regional centers to have service coordinator-to-consumer ratios, as follows:

(1) An average service coordinator to consumer ratio of one to 62 for all consumers who have not moved from the developmental centers to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 79 consumers for more than 60 days.

(2) An average service coordinator-to-consumer ratio of one to 45 for all consumers who have moved from a developmental center to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 59 consumers for more than 60 days.

(d) For purposes of this section, "service coordinator" means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' individual program plans, securing and coordinating consumer services and supports, and providing placement and monitoring activities.

(e) By December 15, 1999, the department shall make recommendations to the Legislature and the Governor regarding the core staffing formula used to allocate operations funding to regional centers. These recommendations shall include consideration of, and public comments related to, the Regional Center Core Staffing Study, and shall include, but not be limited to, all of the following:

(1) Salary and wage levels for positions deemed necessary to retain and maintain qualified staff.

(2) Regional center staff positions that should be mandated.

(3) Staffing ratios necessary to meet the requirements of this chapter, including a service coordinator-to-consumer ratio necessary to appropriately meet the needs of consumers who are younger than three years of age and their families.

(4) Funding methodologies.

(5) Indicate the impact to staffing ratios implemented pursuant to subdivision (c).

(f) In order to ensure that caseload ratios are maintained pursuant to this section, each regional center shall provide service coordinator caseload data to the department in September and March of each fiscal year, commencing in the 1999-2000 fiscal year. The data shall be submitted in a format prescribed by the department. Within 30 days of receipt of data submitted pursuant to this subdivision, the department shall make a summary of the data available to the public upon request. The department shall verify the accuracy of the data when conducting regional center fiscal audits. Data submitted by regional centers pursuant to this subdivision shall:

(1) Only include data on service coordinator positions as defined in subdivision (d). Regional centers shall identify the number of positions that perform service coordinator duties on less than a fulltime basis. Staffing ratios reported pursuant to this subdivision shall reflect the appropriate proportionality of these staff to consumers served.

(2) Be reported separately for service coordinators whose caseload primarily includes any of the following:

(A) Consumers who are three years of age and older and who have not moved from the developmental center to the community since April 14, 1993.

(B) Consumers who have moved from a developmental center to the community since April 14, 1993.

(C) Consumers who are younger than three years of age.

(3) Not include positions that are vacant for more than 60 days.

(g) The department shall provide technical assistance and require a plan of correction for any regional center that, for two consecutive reporting periods, fails to maintain service coordinator caseload ratios required by this section or otherwise demonstrates an inability to maintain appropriate staffing patterns pursuant to this section. Plans of correction shall be developed following input from the local area board, local organizations representing consumers, family members, regional center employees, including recognized labor organizations, and service providers, and other interested parties.

(h) Contracts between the department and regional center shall require the regional center to have, or contract for, all of the following areas:

(1) Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.

(2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.

(3) Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.

(4) Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.

(5) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.

(6) Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinate the regional center quality assurance efforts.

(7) Each regional center shall employ at least one consumer advocate who is a person with developmental disabilities.

(8) Other staffing arrangements related to the delivery of services that the department determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.

(i) Any regional center proposing a staffing arrangement that substantially deviates from the requirements of this section shall request a waiver from the department. Prior to granting a waiver, the department shall require a detailed staffing proposal, including, but not limited to, how the proposed staffing arrangement will benefit consumers and families served, and shall demonstrate clear and convincing support for the proposed staffing arrangement from constituencies served and impacted, that include, but are not limited to, consumers, families, providers, advocates, and recognized labor organizations. In addition, the regional center shall submit to the department any written opposition to the proposal from organizations or individuals, including, but not limited to, consumers, families, providers, and advocates, including recognized labor organizations. The department may grant waivers to regional centers that sufficiently demonstrate that the proposed staffing arrangement is in the best interest of consumers and families served, complies with the requirements of this chapter, and does not violate any contractual requirements. A waiver shall be approved by the department for up to 12 months, at which time a regional center may submit a new request pursuant to this subdivision.

(j) The requirements of subdivisions (c), (g), and (i) shall not apply when a regional center is required to develop an expenditure plan pursuant to Section 4791, and when the expenditure plan addresses the specific impact of the budget reduction on staffing requirements and the expenditure plan is approved by the department.

SEC. 26. Section 4647 of the Welfare and Institutions Code is amended to read:

4647. (a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team

considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

(b) The regional center shall assign a service coordinator who shall be responsible for implementing, overseeing, and monitoring each individual program plan. The service coordinator may be an employee of the regional center or may be a qualified individual or employee of an agency with whom the regional center has contracted to provide service coordination services, or persons described in Section 4647.2. The regional center shall provide the consumer or, where appropriate, his or her parents, legal guardian, or conservator or authorized representative, with written notification of any permanent change in the assigned service coordinator within 10 business days. No person shall continue to serve as a service coordinator for any individual program plan unless there is agreement by all parties that the person should continue to serve as service coordinator.

(c) Where appropriate, a consumer or the consumer's parents or other family members, legal guardian, or conservator, may perform all or part of the duties of the service coordinator described in this section if the regional center director agrees and it is feasible.

(d) If any person described in subdivision (c) is designated as the service coordinator, that person shall not deviate from the agreed-upon program plan and shall provide any reasonable information and reports required by the regional center director.

(e) If any person described in subdivision (c) is designated as the service coordinator, the regional center shall provide ongoing information and support as necessary, to assist the person to perform all or part of the duties of service coordinator.

SEC. 27. Section 4681.3 of the Welfare and Institutions Code is amended to read:

4681.3. (a) Notwithstanding any other provision of this article, for the 1996–97 fiscal year, the rate schedule authorized by the department in operation June 30, 1996, shall be increased based upon the amount appropriated in the Budget Act of 1996 for that purpose. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(b) Notwithstanding any other provision of this article, for the 1997–98 fiscal year, the rate schedule authorized by the department in operation on June 30, 1997, shall be increased based upon the amount appropriated in the Budget Act of 1997 for that purpose. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(c) Notwithstanding any other provision of this article, for the 1998–99 fiscal year, the rate schedule authorized by the department in operation on June 30, 1998, shall be increased commencing July 1, 1998, based upon the amount appropriated in the Budget Act of 1998 for that purpose. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(d) Notwithstanding any other provision of this article, for the 1998–99 fiscal year, the rate schedule authorized by the department in operation on December 31, 1998, shall be increased January 1, 1999, based upon the cost-of-living adjustments in the Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled appropriated in the Budget Act of 1998 for that purpose. The increase shall be applied as a percentage and the percentage shall be the same for all providers.

(e) Notwithstanding any other provision of this article, for the 1999–2000 fiscal year, the rate schedule authorized by the department in operation on June 30, 1999, shall be increased July 1, 1999, based upon the amount appropriated in the Budget Act of 1999 for that purpose. The increase shall be applied as a percentage and the percentage shall be the same for all providers.

(f) In addition, commencing January 1, 2000, any funds available from cost-of-living adjustments in the Supplemental Security Income/State Supplementary Payment (SSI/SSP) for the 1999–2000 fiscal year shall be used to further increase the community care facility rate. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

SEC. 28. Section 5701.1 is added to the Welfare and Institutions Code, to read:

5701.1. Notwithstanding Section 5701, the State Department of Mental Health, in consultation with the California Mental Health Directors Association, may utilize funding from the Substance Abuse and Mental Health Services Administration Block Grant, awarded to the State Department of Mental Health, above the funding level provided in federal fiscal year 1998, for the development of innovative programs for identified target populations, upon appropriation by the Legislature.

SEC. 29. Section 6501 is added to the Welfare and Institutions Code, to read:

6501. If a person is charged with a violent felony, as described in Section 667.5 of the Penal Code, and the individual has been committed to the State Department of Developmental Services pursuant to Section 1370.1 of the Penal Code or Section 6500 for placement in a secure treatment facility, as described in subdivision (e) of Section 1370.1 of the Penal Code, the department shall give priority to placing the individual at Porterville Developmental Center prior to placing the individual at any other developmental center that has been designated as a secure treatment facility.

SEC. 30. Section 14005.30 of the Welfare and Institutions Code is amended to read:

14005.30. (a) (1) To the extent that federal financial participation is available, Medi-Cal benefits under this chapter shall be provided to individuals eligible for services under Section 1396u-1 of Title 42 of the United States Code, including any options under Section 1396u-1(b)(2)(C) made available to and exercised by the state.

(2) The department shall exercise its option under Section 1396u-1(b)(2)(C) of Title 42 of the United States Code to adopt less restrictive income and resource eligibility standards and methodologies to the extent necessary to allow all recipients of benefits under Chapter 2 (commencing with Section 11200) to be eligible for Medi-Cal under paragraph (1).

(b) To the extent that federal financial participation is available, the department shall exercise its option under Section 1396u-1(b)(2)(C) of Title 42 of the United States Code as necessary to expand eligibility for Medi-Cal under subdivision (a) by, commencing August 1, 1999, exempting all resources. If federal financial participation is not available to exempt all resources, then the department shall continue to establish the amount of countable resources individuals or families are allowed to retain at the same amount medically needy individuals and families are allowed to retain, except that a family of one shall be allowed to retain countable resources in the amount of three thousand dollars ($3,000).

(c) To the extent federal financial participation is available, the department shall, commencing March 1, 2000, adopt an income disregard for applicants equal to the difference between the income standard under the program adopted pursuant to Section 1931(b) of the federal Social Security Act (42 U.S.C. Sec. 1396u-1) and the amount equal to 100 percent of the federal poverty level applicable to the size of the family.

(d) Except for the exemption of resources effective as of August 1, 1999, as provided in subdivision (b), subdivision (b) shall be applied retroactively to January 1, 1998.

(e) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement, without taking regulatory action, subdivisions (a) and (b) of this section by means of an all county letter or similar instruction. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Beginning six months after the effective date of this section, the department shall provide a status report to the Legislature on a semiannual basis until regulations have been adopted.

SEC. 31. Section 14007.5 of the Welfare and Institutions Code is amended to read:

14007.5. (a) Aliens shall be eligible for Medi-Cal, whether federally funded or state-funded, only to the same extent as permitted under federal law and regulations for receipt of federal financial participation under Title XIX of the federal Social Security Act, except as otherwise provided in this section and Section 14007.7.

(b) In accordance with Section 1903(v)(1) of the federal Social Security Act (42 U.S.C. Sec. 1396b(v)(1)), an alien shall only be eligible for the full scope of Medi-Cal benefits, if the alien has been lawfully admitted for permanent residence, or is otherwise permanently residing in the United States under color of law.

For purposes of this section, aliens "permanently residing in the United States under color of law" shall be interpreted to include all aliens residing in the United States with the knowledge and permission of the United States Immigration and Naturalization Service and whose departure the United States Immigration and Naturalization Service does not contemplate enforcing and with respect to whom federal financial participation is available under Title XIX of the federal Social Security Act.

(c) Any alien whose immigration status has been adjusted either to lawful temporary resident or lawful permanent resident in accordance with the provisions of Section 210, 210A, or 245A of the federal Immigration and Nationality Act, and who meets all other eligibility requirements, shall be eligible only for care and services under Medi-Cal for which the alien is not disqualified pursuant to those sections of the federal act.

(d) Any alien who is otherwise eligible for Medi-Cal services, but who does not meet the requirements under subdivision (b) or (c), shall only be eligible for care and services that are necessary for the treatment of an emergency medical condition and medical care directly related to the emergency, as defined in federal law. For purposes of this section, the term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction to any bodily organ or part. It is the intent of this section to entitle eligible individuals to inpatient and outpatient services that are necessary for the treatment of the emergency medical condition in the same manner as administered by the department through regulations and provisions of federal law.

(e) Pursuant to Section 14001.2, each county department shall require that each applicant for, or beneficiary of, Medi-Cal, including a child, shall provide his or her social security number account number, or numbers, if he or she has more than one social security number.

(f) (1) In order to be eligible for benefits under subdivision (b) or (c), an alien applicant or beneficiary shall present alien registration documentation or other proof of satisfactory immigration status from the United States Immigration and Naturalization Service.

(2) Any alien who meets all other program requirements but who lacks documentation of alien registration or other proof of satisfactory immigration status shall be provided a reasonable opportunity to submit the evidence. For purposes of this paragraph, "reasonable opportunity" means 30 days or the time it actually takes the county to process the Medi-Cal application, whichever is longer.

(3) During the reasonable opportunity period under paragraph (2), the county department shall process the applicant's application for medical assistance in a manner that conforms to its normal processing procedures and timeframes.

(g) (1) The county department shall grant only the Medi-Cal benefits set forth in subdivision (d) of this section or in Section 14007.7 to any individual who, after 30 calendar days or the time it actually takes the county to process the Medi-Cal application, whichever is longer, has failed to submit documents constituting reasonable evidence indicating a satisfactory immigration status for Medi-Cal purposes, or who is reported by the United States Immigration and Naturalization Service to lack a satisfactory immigration status for Medi-Cal purposes.

(2) If an alien has been receiving Medi-Cal benefits based on eligibility established prior to the effective date of this section and that individual, upon redetermination of eligibility for benefits, fails to submit documents constituting reasonable evidence indicating a satisfactory immigration status for Medi-Cal purposes, the county department shall discontinue the Medi-Cal benefits, except for the care and services set forth in subdivision (d) of this section or in Section 14007.7. The county department shall provide adequate notice to the individual of any adverse action and shall accord the individual an opportunity for a fair hearing if he or she requests one.

(h) To the extent permitted by federal law and regulations, an alien applying for services under subdivisions (b) and (c) shall be granted eligibility for the scope of services to which he or she would otherwise be entitled if, at the time the county department makes the determination about his or her eligibility, the alien meets either of the following requirements:

(1) He or she has not had a reasonable opportunity to submit documents constituting reasonable evidence indicating satisfactory immigration status.

(2) He or she has provided documents constituting reasonable evidence indicating a satisfactory immigration status, but the county department has not received timely verification of the alien's immigration status from the United States Immigration and Naturalization Service.

(3) The verification process shall protect the privacy of all participants. An alien's immigration status shall be subject to verification by the United States Immigration and Naturalization Service, to the extent required for receipt of federal financial participation in the Medi-Cal program.

(i) If an alien does not declare status as a lawful permanent resident or alien permanently residing under color of law, or as an alien legalized under Section 210, 210A, or 245A of the federal Immigration and Nationality Act (P.L. 82-414), Medi-Cal coverage under subdivision (d) of this section or in Section 14007.7 shall be provided to the individual if he or she is otherwise eligible.

(j) If an alien subject to this section is not fluent in English, the county department shall provide an understandable explanation of the requirements of this section in a language in which the alien is fluent.

(k) Aliens who were receiving long-term care or renal dialysis services (1) on the day prior to the effective date of the amendment to paragraph (1) of subdivision (f) of Section 1 of Chapter 1441 of the Statutes of 1988 at the 1991–92 Regular Session of the Legislature and (2) under the authority of paragraph (1) of subdivision (f) of Section 1 of Chapter 1441 of the Statutes of 1988 as it read on June 30, 1992, shall continue to receive these services. The authority for continuation of long-term care or renal dialysis services in this subdivision shall not apply to any person whose long-term care or renal dialysis services end for any reason after the effective date of the amendment described in this subdivision.

SEC. 32. Section 14007.65 is added to the Welfare and Institutions Code, to read:

14007.65. (a) Any alien who is otherwise eligible for Medi-Cal services, but who does not meet the requirements under subdivision (b) or (c) of Section 14007.5, shall be eligible for long-term care services.

(b) Subdivision (a) is intended to reconfirm, and be declaratory of, existing law.

SEC. 33. Section 14007.7 is added to the Welfare and Institutions Code, to read:

14007.7. Any alien who is otherwise eligible for Medi-Cal services, but who does not meet the requirements under subdivision (b) or (c) of Section 14007.5, shall be eligible for medically necessary pregnancy-related services.

SEC. 34. Section 14008.85 is added to the Welfare and Institutions Code, to read:

14008.85. (a) To the extent federal financial participation is available, a parent who is the principal wage earner shall be considered an unemployed parent for purposes of establishing eligibility based upon deprivation of a child where any of the following applies:

(1) The parent works less than 100 hours per month as determined pursuant to the rules of the Aid to Families with Dependent Children program as it existed on July 16, 1996, including the rule allowing a temporary excess of hours due to intermittent work.

(2) The total net nonexempt earned income for the family is not more than 100 percent of the federal poverty level as most recently calculated by the federal government. The department may adopt additional deductions to be taken from a family's income.

(3) The parent is considered unemployed under the terms of an existing federal waiver of the 100-hour rule for recipients under the program established by Section 1931(b) of the federal Social Security Act (42 U.S.C. Sec. 1396u-1).

(b) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of an all county letter or similar instruction without taking regulatory action. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) This section shall become operative March 1, 2000.

SEC. 35. Section 14011.15 is added to the Welfare and Institutions Code, to read:

14011.15. (a) The department shall, not later than July 1, 2000, create and implement a simplified application package for children, families, and adults applying for Medi-Cal benefits. This simplified application package shall include a simplified supplemental resource form.

(b) In developing the application package described in subdivision (a), the department shall seek input from persons with expertise, including beneficiary representatives, counties, and beneficiaries.

(c) The department shall allow an applicant to apply for benefits by mailing in the simplified application package.

(d) The simplified application package shall utilize at a minimum, all of the following documentation standards:

(1) Proof of income shall be documented by the most recent paystub or a copy of the last year's federal income tax return.

(2) Self-declaration of pregnancy.

(3) A simplified supplemental resource form, if applicable.

(e) The department shall not require an applicant who submits a simplified application pursuant to this section to complete a face-to-face interview, except for good cause, a suspicion of fraud, or in order to complete the application process. A county shall conduct random monitoring of the mail-in application process to ensure appropriate enrollment. Every application package shall contain a notification of the applicant's right to complete a face-to-face interview.

(f) Not later than July 1, 2000, the department shall revise the quarterly reporting form to be as simple as possible to complete.

(g) The department shall implement this section only to the extent that its provisions are not in violation of the requirements of federal law, and only to the extent that federal financial participation is not jeopardized.

(h) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of an all county letter or similar instruction without taking regulatory action. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 36. Section 14018.5 is added to the Welfare and Institutions Code, to read:

14018.5. Notwithstanding any other provision of law, Section 3275 of the Civil Code does not apply to Medi-Cal reimbursement or prior authorization.

SEC. 37. Article 1.3 (commencing with Section 14043) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 1.3. Provider Enrollment

14043. In order to ensure the proper and efficient administration of the Medi-Cal program, every applicant, as defined in subdivision (b) of Section 14043.1, and every provider, as defined in subdivision (e) of Section 14043.1, shall be subject to the requirements of this article.

14043.1. As used in this article:

(a) "Abuse" means either of the following:

(1) Practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's medicaid program, or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state.

(2) Practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

(b) "Applicant" means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, employees, or agents thereof, that applies to the department for enrollment as a provider in the Medi-Cal program.

(c) "Convicted" means any of the following:

(1) A judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether there is a posttrial motion or an appeal pending or the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed.

(2) A federal, state, or local court has made a finding of guilt against an individual or entity.

(3) A federal, state, or local court has accepted a plea of guilty or nolo contendere by an individual or entity.

(4) An individual or entity has entered into participation in a first offender, deferred adjudication, or other program or arrangement where judgment of conviction has been withheld.

(d) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(e) "Provider" means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, employees, or agents thereof, that provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary and that has been enrolled in the Medi-Cal program.

(f) "Professionally recognized standards of health care" means statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognize as applying to those peers practicing or providing care within a state. When the United States Department of Health and Human Services has declared a treatment modality not to be safe and effective, practitioners that employ that treatment modality shall be deemed not to meet professionally recognized standards of health care. This definition shall not be construed to mean that all other treatments meet professionally recognized standards of care.

(g) "Unnecessary or substandard items or services" means those that are either of the following:

(1) Substantially in excess of the provider's usual charges or costs for the items or services.

(2) Furnished, or caused to be furnished, to patients, whether or not covered by Medicare, medicaid, or any of the state health care programs to which the definitions of applicant and provider apply, and which are substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care. The department's determination that the items or services furnished were excessive or of unacceptable quality shall be made on the basis of information, including sanction reports, from the following sources:

(A) The professional review organization for the area served by the individual or entity.

(B) State or local licensing or certification authorities.

(C) Fiscal agents or contractors, or private insurance companies.

(D) State or local professional societies.

(E) Any other sources deemed appropriate by the department.

14043.15. The department may adopt regulations for certification of each applicant and each provider in the Medi-Cal program. No certification shall be required for clinics licensed under Section 1204 of the Health and Safety Code, clinics exempt from licensure under Section 1206 of the Health and Safety Code, health facilities licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or natural persons licensed or certified under Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Intiative Act.

14043.2. (a) Whether or not regulations for certification are adopted under Section 14043.15, in order to be enrolled as a provider, or for enrollment as a provider to continue, an applicant or provider may be required to sign a provider agreement and shall disclose all information as required in federal medicaid regulations and any other information required by the department. The director may designate the form of a provider agreement by provider type. Failure to disclose the required information, or the disclosure of false information, shall, prior to any hearing, result in denial of the application for enrollment or shall make the provider subject to temporary suspension, which shall include temporary deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program.

(b) The director shall notify the provider of the temporary suspension and deactivation of the provider's Medi-Cal provider number or numbers and the effective date thereof. Notwithstanding Section 100171 of the Health and Safety Code and Section 14123, proceedings after the imposition of sanctions provided for in subdivision (a) shall be in accordance with Section 14043.65.

14043.25. (a) The application form for enrollment, the provider agreement, and all attachments or changes to either, shall be signed under penalty of perjury.

(b) The department may require that the application form for enrollment, the provider agreement, and all attachments or changes to either, submitted by an applicant or provider licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, be notarized.

(c) Application forms for enrollment, provider agreements, and all attachments or changes to either, submitted by an applicant or provider not subject to subdivision (b) shall be notarized.

14043.3. A provider shall be required to reimburse those Medi-Cal funds received during any period for which material information was not reported, or reported falsely, to the department.

14043.35. Sections 14043.2, 14043.25, and 14043.3 shall not limit the authority granted the director and the rights granted providers in Section 14123. Action taken under the authority granted in Section 14123 shall be taken in accordance with that section.

14043.36. (a) The department shall not enroll any applicant that has been convicted of any felony or misdemeanor involving fraud or abuse in any government program, that has been found guilty of fraud or abuse in any civil proceeding, or that has entered into a settlement in lieu of conviction for fraud or abuse, within the previous five years. In addition, the department may deny enrollment to any applicant that, at the time of application, is under investigation pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations. The department shall not deny enrollment to an otherwise qualified applicant whose felony or misdemeanor charges did not result in a conviction solely on the basis of the prior charges. If it is discovered that a provider is under investigation for fraud or abuse, that provider shall be subject to temporary suspension, which shall include temporary deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program.

(b) The director shall notify the provider of the temporary suspension and deactivation of the provider's Medi-Cal provider number or numbers and the effective date thereof. Notwithstanding Section 100171 of the Health and Safety Code, proceedings after the imposition of sanctions provided for in subdivision (a) shall be in accordance with Section 14043.65.

14043.37. The department may complete a background check on applicants for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud and abuse. The background check may include, but not be limited to, the following:

(a) Onsite inspection prior to enrollment.

(b) Review of business records.

(c) Data searches.

14043.4. If discrepancies are found to exist during the preenrollment period, the department may conduct additional inspections prior to enrollment. Failure to remediate discrepancies as prescribed by the director may result in denial of the application for enrollment.

14043.45. Notwithstanding the adoption of the Standardized National Application form and the National Provider Identifier by the federal government, a provider may be issued a unique identification number or numbers, as prescribed by the director.

14043.5. Subject to Article 4 (commencing with Section 19130) of Chapter 5 of Division 5 of Title 2 of the Government Code, the

department may enter into contracts to secure consultant services or information technology including, but not limited to, software, data, or analytical techniques or methodologies for the purpose of fraud or abuse detection and prevention. Contracts under this section shall be exempt from the Public Contract Code.

14043.55. The department may implement a 180-day moratorium on the enrollment of providers in a specific provider of service category, on a statewide basis or within a geographic area, except that no moratorium shall be implemented on the enrollment of providers who are licensed as clinics under Section 1204 of the Health and Safety Code, health facilities under Chapter 2 (commencing with Section 1250) of the Health and Safety Code, clinics exempt from licensure under Section 1206 of the Health and Safety Code, or natural persons licensed or certified under Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, when the director determines this action is necessary to safeguard public funds or to maintain the fiscal integrity of the program. This moratorium may be extended or repeated when the director determines this action is necessary to safeguard public funds or to maintain the fiscal integrity of the program. The authority granted in this section shall not be interpreted as a limitation on the authority granted to the department in Section 14105.3.

14043.6. The department shall automatically suspend, as a provider in the Medi-Cal program, any individual who, or any entity that, has a license, certificate, or other approval to provide health care, which is revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing on that license, certificate, or approval was pending. The automatic suspension shall be effective on the date that the license, certificate, or approval was revoked, lost, or surrendered.

14043.65. Notwithstanding any other provision of law, any applicant whose application for enrollment as a provider or whose certification is denied, or any provider who is denied continued enrollment or certification, who has been temporarily suspended, or who has had payments withheld, who has had one or more provider numbers used to obtain reimbursement from the Medi-Cal program deactivated, pursuant to Section 14107.11, may appeal this action by submitting a written appeal, including any supporting evidence, to the director. Where the appeal is of a withholding of payment pursuant to Section 14107.11, the appeal to the director shall be limited to the issue of the reliability of the evidence supporting the withhold and shall not encompass fraud or abuse. The appeal procedure shall not include a formal administrative hearing under the Administrative Procedure Act and shall not result in reactivation of any deactivated provider numbers during appeal. An applicant or

provider that appeals an action taken pursuant to this article shall submit all pertinent documents and all other relevant evidence to the director or to the director's designee within 60 days of the date of notification of the department's action. The director or the director's designee shall review all of the relevant materials submitted and shall issue a decision within 90 days of the receipt of the evidence. The decision may provide that the action taken should be upheld, continued, or reversed, in whole or in part. The decision of the director or the director's designee shall be final. Any further appeal shall be required to be filed in accordance with Section 1085 of the Civil Code.

14043.7. (a) The department may make unannounced visits to any applicant or to any provider for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, or as necessary for the administration of the Medi-Cal program. At the time of the visit, the applicant or provider shall be required to demonstrate an established place of business appropriate and adequate for the services billed or claimed to the Medi-Cal program, as relevant to his or her scope of practice, as indicated by, but not limited to, the following:

(1) Being open and available to the general public.

(2) Having regularly established and posted business hours.

(3) Having adequate supplies in stock on the premises.

(4) Meeting all local laws and ordinances regarding business licensing and operations.

(5) Having the necessary equipment and facilities to carry out day-to-day business for his or her practice.

(b) An unannounced visit pursuant to subdivision (a) shall be prohibited with respect to clinics licensed under Section 1204 of the Health and Safety Code, clinics exempt from licensure under Section 1206 of the Health and Safety Code, health facilities licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, and natural persons licensed or certified under Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, unless the department has reason to believe that the provider will defraud or abuse the Medi-Cal program or lacks the organizational or administrative capacity to provide services under the program.

(c) Failure to remediate discrepancies that are discovered as a result of an unannounced visit to a provider shall, prior to hearing, make the provider subject to temporary suspension, which shall include temporary deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The director shall notify the provider of the temporary suspension and deactivation of provider numbers, and the effective date thereof. Notwithstanding Section 100171 of the Health and Safety Code,

proceedings after the imposition of sanctions in this paragraph shall be in accordance with Section 14043.65.

14043.75. The director may, by regulation, adopt additional measures to prevent or curtail fraud and abuse.

SEC. 38. Section 14053 of the Welfare and Institutions Code is amended to read:

14053. The term "health care services" means the benefits set forth in Article 4 (commencing with Section 14131) of this chapter and in Section 14021. The term includes inpatient hospital services for any individual under 21 years of age in an institution for mental diseases. Any individual under 21 years of age receiving inpatient psychiatric hospital services immediately preceding the date on which he or she attains age 21 may continue to receive these services until he or she attains age 22. The term also includes early and periodic screening, diagnosis, and treatment for any individual under 21 years of age.

The term "health care services" does not include, except to the extent permitted by federal law, any of the following:

(a) Care or services for any individual who is an inmate of an institution (except as a patient in a medical institution).

(b) Care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis.

(c) Inpatient services provided to individuals 21 to 64 years of age, inclusive, in an institution for mental diseases operating under a consolidated license with a general acute care hospital pursuant to Section 1250.8 of the Health and Safety Code, unless federal financial participation is available for such inpatient services.

SEC. 39. Section 14053.1 is added to the Welfare and Institutions Code, to read:

14053.1. Notwithstanding Section 14053, ancillary outpatient services, pursuant to Section 14132, for any eligible individual who is 21 years of age or over, and has not attained 65 years of age and who is a patient in an institution for mental diseases shall be covered regardless of the availability of federal financial participation.

SEC. 40. Section 14067 of the Welfare and Institutions Code is amended to read:

14067. (a) The department, in conjunction with the Managed Risk Medical Insurance Board, shall develop and conduct a community outreach and education campaign to help families learn about, and apply for, Medi-Cal and the Healthy Families Program of the Managed Risk Medical Insurance Board, subject to the requirements of federal law. In conducting this campaign, the department may seek input from, and contract with, various entities and programs that serve children, including, but not limited to, the State Department of Education, counties, Women, Infants, and Children program agencies, Head Start and Healthy Start programs, and community-based organizations that deal with potentially

eligible families and children to assist in the outreach, education, and application completion process.

(b) The outreach and education campaign shall be established and implemented as of February 18, 1998. An annual outreach plan shall be submitted to the Legislature by April 1 for each fiscal year. The plan shall address both the Medi-Cal program for children and the Healthy Families Program and, at a minimum, shall include the following:

(1) Specific milestones and objectives to be completed for the upcoming year and their anticipated cost.

(2) A general description of each strategy or method to be used for outreach.

(3) Geographic areas and special populations to be targeted, if any, and why the special targeting is needed.

(4) Coordination with other state or county education and outreach efforts.

(5) The results of previous year outreach efforts.

(c) In implementing this section, the department may amend any existing or future media outreach campaign contract that it has entered into pursuant to Section 14148.5. Notwithstanding any other provision of law, any such contract entered into, or amended, as required to implement this section, shall be exempt from the approval of the Director of General Services and from the provisions of the Public Contract Code.

(d) (1) The department, in conjunction with the Managed Risk Medical Insurance Board, shall award contracts to community-based organizations to help families learn about, and enroll in, the Medi-Cal program and Healthy Families Program, and other health care programs for low-income children. Funding shall be contingent upon appropriation in the annual Budget Act.

(2) Contracts for these outreach and enrollment projects shall be awarded based on, but not limited to, all of the following criteria:

(A) Capacity to reach populations or geographic areas with disproportionately low enrollment rates. If it is not possible to estimate the number of uninsured children in a geographic area who are eligible for the Medi-Cal program or the Healthy Families Program, proxy measures for rates of eligible children may be used. These measures may include, but are not limited to, the number of children in families with gross annual household incomes at or below the federal poverty levels pertinent to the programs.

(B) Organizational capacity and experience, including, but not limited to, any of the following:

(i) Organizational experience in serving low-income families.

(ii) Ability to work effectively with populations that have disproportionately low enrollment rates.

(iii) Organizational experiences in helping families learn about, and enroll in, the Medi-Cal program and Healthy Families Program. Organizations that do not have experience helping families learn

about, and enroll in, the Medi-Cal program and Healthy Families Program shall be eligible only to the extent that they support and collaborate with the outreach and enrollment activities of entities with that experience.

(C) Effectiveness of the outreach and education plan, including, but not limited to, all of the following:

(i) Culturally and linguistically appropriate outreach and education strategies.

(ii) Strategies to identify and address barriers to enrollment, such as transportation limitations and community perceptions regarding the Medi-Cal program and Healthy Families Program.

(iii) Coordination with other outreach efforts in the community, including the statewide Healthy Families Program and Medi-Cal program outreach campaign, the state and federally funded county Medi-Cal outreach program, and any other Medi-Cal program and Healthy Families Program outreach projects in the target community.

(iv) Collaboration with other local organizations that serve families of eligible children.

(v) Strategies to ensure that children and families retain coverage and are informed of options for health coverage and services when they lose eligibility for a particular program.

(vi) Plans to inform families about all available health care programs and services.

SEC. 41. Section 14085.7 of the Welfare and Institutions Code is amended to read:

14085.7. (a) The Medi-Cal Medical Education Supplemental Payment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in this section. Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) All public moneys transferred by public agencies to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws.

(2) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Any interest that accrues on amounts in the fund.

(b) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(c) The department shall have the discretion to accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal matching funds to the full extent permitted by law. The department shall accept only those funds that are certified by the transferring or donating entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable, and may return any funds transferred or donated in error.

(d) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under subdivision (e). Distributions from the fund shall be supplemental to any other amounts that hospitals receive under the contracting program.

(e) For purposes of recognizing medical education costs incurred for services rendered to Medi-Cal beneficiaries, payments from this fund shall be negotiated between the California Medical Assistance Commission and hospitals contracting under this article that meet the definition of university teaching hospitals or major (nonuniversity) teaching hospitals as set forth on page 51 and as listed on page 57 of the department's report dated May 1991, entitled "Hospital Peer Grouping." Payments from the fund shall be used solely for the purposes identified in the contract between the hospital and the state.

(f) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup any federal disallowance from the hospital.

(g) 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. 42. Section 14085.8 of the Welfare and Institutions Code is amended to read:

14085.8. (a) The Large Teaching Emphasis Hospital and Children's Hospital Medi-Cal Medical Education Supplemental Payment Fund is hereby created in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in this section.

(c) Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) All public moneys transferred by public agencies to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws.

(2) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Any interest that accrues on amounts in the fund.

(d) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(e) The department may accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal matching funds to the full extent permitted by law. The department shall accept only those funds that are certified by the transferring or donating entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable, and may return any funds transferred or donated in error.

(f) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under subdivision (g). Distributions from the fund shall be supplemental to any other amounts that hospitals receive under the contracting program.

(g) (1) For purposes of recognizing medical education costs incurred for services rendered to Medi-Cal beneficiaries, contracts for payments from the fund may, at the discretion of the California Medical Assistance Commission, be negotiated between the commission and hospitals contracting under this article that are defined as either of the following:

(A) A large teaching emphasis hospital, as set forth on page 51 and listed on page 57 of the department's report dated May 1991, entitled "Hospital Peer Grouping," and meets the definition of eligible hospital as defined in paragraph (3) of subdivision (a) of Section 14105.98.

(B) A children's hospital pursuant to Section 10727 and meets the definition of eligible hospital as defined in paragraph (3) of subdivision (a) of Section 14105.98.

(2) Payments from the fund shall be used solely for the purposes identified in the contract between the hospital and the state.

(h) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup any federal disallowance from the hospital.

(i) 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. 43. Section 14087.301 is added to the Welfare and Institutions Code, to read:

14087.301. When entering into contracts with health care service plans that provide comprehensive dental benefits to Medi-Cal beneficiaries on an at-risk basis, the department may require that the health care service plans pay for the costs of the administrative and regulatory oversight required to monitor the contract compliance terms of the agreement with the department.

SEC. 44. Section 14094.3 of the Welfare and Institutions Code is amended to read:

14094.3. (a) Notwithstanding this article or Section 14093.05 or 14094.1, CCS covered services shall not be incorporated into any Medi-Cal managed care contract entered into after August 1, 1994, pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.9 (commencing with Section 14088), Article 2.91 (commencing with Section 14089), Article 2.95 (commencing with Section 14092); or either Article 2 (commencing with Section 14200), or Article 7 (commencing with Section 14490) of Chapter 8, until August 1, 2005, except for contracts entered into for county organized health systems in the Counties of San Mateo, Santa Barbara, Solano and Napa.

(b) Notwithstanding any other provision of this chapter, providers serving children under the CCS program who are enrolled with a Medi-Cal managed care contractor but who are not enrolled in a pilot project pursuant to subdivision (c) shall continue to submit billing for CCS covered services on a fee-for-service basis until CCS covered services are incorporated into the Medi-Cal managed care contracts described in subdivision (a).

(c) (1) The department may authorize a pilot project in Solano County in which reimbursement for conditions eligible under the CCS program may be reimbursed on a capitated basis pursuant to Section 14093.05, and provided all CCS program's guidelines, standards, and regulations are adhered to, and CCS program's case management is utilized.

(2) During the time period described in subdivision (a), the department may approve, implement, and evaluate limited pilot

projects under the CCS program to test alternative managed care models tailored to the special health care needs of children under the CCS program. The pilot projects may include, but need not be limited to, coverage of different geographic areas, focusing on certain subpopulations, and the employment of different payment and incentive models. Pilot project proposals from CCS program-approved providers shall be given preference. All pilot projects shall utilize CCS program-approved standards and providers pursuant to Section 14094.1.

(d) (1) The department shall submit to the appropriate committees of the Legislature an evaluation of pilot projects established pursuant to subdivision (c) based on at least one full year of operation.

(2) The evaluation required by paragraph (1) shall address the impact of the pilot projects on outcomes as set forth in paragraph (4) and, in addition, shall do both of the following:

(A) Examine the barriers, if any, to incorporating CCS covered services into the Medi-Cal managed care contracts described in subdivision (a).

(B) Compare different pilot project models with the fee-for-service system. The evaluation shall identify, to the extent possible, those factors that make pilot projects most effective in meeting the special needs of children with CCS eligible conditions.

(3) CCS covered services shall not be incorporated into the Medi-Cal managed care contracts described in subdivision (a) before the evaluation process has been completed.

(4) The pilot projects shall be evaluated to determine if:

(A) All children enrolled with a Medi-Cal managed care contractor described in subdivision (a) identified as having a CCS eligible condition are referred in a timely fashion for appropriate health care.

(B) All children in the CCS program have access to coordinated care that includes primary care services in their own community.

(C) CCS program standards are adhered to.

(e) For purposes of this section, CCS covered services include all program benefits administered by the program specified in Section 123840 of the Health and Safety Code regardless of the funding source.

(f) Nothing in this section shall be construed to exclude or restrict CCS eligible children from enrollment with a managed care contractor or from receiving from the managed care contractor with which they are enrolled primary and other health care unrelated to the treatment of the CCS eligible condition.

SEC. 45. Section 14105.31 of the Welfare and Institutions Code is amended to read:

14105.31. For purposes of the Medi-Cal contract drug list, the following definitions shall apply:

(a) "Single-source drug" means a drug that is produced and distributed under an original New Drug Application approved by the federal Food and Drug Administration. This shall include a drug marketed by the innovator manufacturer and any cross-licensed producers or distributors operating under the New Drug Application, and shall also include a biological product, except for vaccines, marketed by the innovator manufacturer and any cross-licensed producers or distributors licensed by the federal Food and Drug Administration pursuant to Section 262 of Title 42 of the United States Code. A drug ceases to be a single-source drug when the same drug in the same dosage form and strength manufactured by another manufacturer is approved by the federal Food and Drug Administration under the provisions for an Abbreviated New Drug Application.

(b) "Best price" means the negotiated price, or the manufacturer's lowest price available to any class of trade organization or entity, including, but not limited to, wholesalers, retailers, hospitals, repackagers, providers, or governmental entities within the United States, that contracts with a manufacturer for a specified price for drugs, inclusive of cash discounts, free goods, volume discounts, rebates, and on- or off-invoice discounts or credits, shall be based upon the manufacturer's commonly used retail package sizes for the drug sold by wholesalers to retail pharmacies.

(c) "Equalization payment amount" means the amount negotiated between the manufacturer and the department for reimbursement by the manufacturer, as specified in the contract. The equalization payment amount shall be based on the difference between the manufacturer's direct catalog price charged to wholesalers and the manufacturer's best price, as defined in subdivision (b).

(d) "Manufacturer" means any person, partnership, corporation, or other institution or entity that is engaged in the production, preparation, propagation, compounding, conversion, or processing of drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or in the packaging, repackaging, labeling, relabeling, and distribution of drugs.

(e) "Price escalator" means a mutually agreed upon price specified in the contract, to cover anticipated cost increases over the life of the contract.

(f) "Medi-Cal pharmacy costs" or "Medi-Cal drug costs" means all reimbursements to pharmacy providers for services or merchandise, including single-source or multiple-source prescription drugs, over-the-counter medications, and medical supplies, or any other costs billed by pharmacy providers under the Medi-Cal program.

(g) "Medicaid rebate" means the rebate payment made by drug manufacturers pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8).

(h) "State rebate" means any negotiated rebate under the Drug Discount Program in addition to the medicaid rebate.

(i) "Date of mailing" means the date that is evidenced by the postmark date by the United States Postal Service or other common mail carrier on the envelope.

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

SEC. 46. Section 14105.33 of the Welfare and Institutions Code is amended to read:

14105.33. (a) The department may enter into contracts with manufacturers of single-source and multiple-source drugs, on a bid or nonbid basis, for drugs from each major therapeutic category, and shall maintain a list of those drugs for which contracts have been executed.

(b) (1) Contracts executed pursuant to this section shall be for the manufacturer's best price, as defined in Section 14105.31, which shall be specified in the contract, and subject to agreed upon price escalators, as defined in that section. The contracts shall provide for an equalization payment amount, as defined in Section 14105.31, to be remitted to the department quarterly. The department shall submit an invoice to each manufacturer for the equalization payment amount, including supporting utilization data from the department's prescription drug paid claims tapes within 30 days of receipt of the Health Care Financing Administration's file of manufacturer rebate information. In lieu of paying the entire invoiced amount, a manufacturer may contest the invoiced amount pursuant to procedures established by the federal Health Care Financing Administration's Medicaid Drug Rebate Program Releases or regulations by mailing a notice, that shall set forth its grounds for contesting the invoiced amount, to the department within 38 days of the department's mailing of the state invoice and supporting utilization data. For purposes of state accounting practices only, the contested balance shall not be considered an accounts receivable amount until final resolution of the dispute pursuant to procedures established by the federal Health Care Financing Administration's Medicaid Drug Rebate Program Releases or regulations that results in a finding of an underpayment by the manufacturer. Manufacturers may request, and the department shall timely provide, at cost, Medi-Cal provider level drug utilization data, and other Medi-Cal utilization data necessary to resolve a contested department-invoiced rebate amount.

(2) The department shall provide for an annual audit of utilization data used to calculate the equalization amount to verify the accuracy of that data. The findings of the audit shall be documented in a

written audit report to be made available to manufacturers within 90 days of receipt of the report from the auditor. Any manufacturer may receive a copy of the audit report upon written request. Contracts between the department and manufacturers shall provide for any equalization payment adjustments determined necessary pursuant to an audit.

(3) Utilization data used to determine an equalization payment amount shall exclude data from both of the following:

(A) Health maintenance organizations, as defined in Section 300e(a) of Title 42 of the United States Code, including those organizations that contract under Section 1396b(m) of Title 42 of the United States Code.

(B) Capitated plans that include a prescription drug benefit in the capitated rate, and that have negotiated contracts for rebates or discounts with manufacturers.

(c) In order that Medi-Cal beneficiaries may have access to a comprehensive range of therapeutic agents, the department shall ensure that there is representation on the list of contract drugs in all major therapeutic categories. Except as provided in subdivision (a) of Section 14105.35, the department shall not be required to contract with all manufacturers who negotiate for a contract in a particular category. The department shall ensure that there is sufficient representation of single-source and multiple-source drugs, as appropriate, in each major therapeutic category.

(d) (1) The department shall select the therapeutic categories to be included on the list of contract drugs, and the order in which it seeks contracts for those categories. The department may establish different contracting schedules for single-source and multiple-source drugs within a given therapeutic category.

(2) The department shall make every attempt to complete the initial contracting process for each major therapeutic category by January 1, 2001.

(e) (1) In order to fully implement subdivision (d), the department shall, to the extent necessary, negotiate or renegotiate contracts to ensure there are as many single-source drugs within each therapeutic category or subcategory as the department determines necessary to meet the health needs of the Medi-Cal population. The department may determine in selected therapeutic categories or subcategories that no single-source drugs are necessary because there are currently sufficient multiple-source drugs in the therapeutic category or subcategory on the list of contract drugs to meet the health needs of the Medi-Cal population. However, in no event shall a beneficiary be denied continued use of a drug which is part of a prescribed therapy in effect as of September 2, 1992, until the prescribed therapy is no longer prescribed.

(2) In the development of decisions by the department on the required number of single-source drugs in a therapeutic category or subcategory, and the relative therapeutic merits of each drug in a

therapeutic category or subcategory, the department shall consult with the Medi-Cal Contract Drug Advisory Committee. The committee members shall communicate their comments and recommendations to the department within 30 business days of a request for consultation, and shall disclose any associations with pharmaceutical manufacturers or any remuneration from pharmaceutical manufacturers.

(3) In order to expedite implementation of paragraph (1), the requirements of Sections 14105.37, 14105.38, subdivisions (a), (c), (e), and (f) of Sections 14105.39, 14105.4, and 14105.405 are waived for the purposes of this section until January 1, 1994.

(f) In order to achieve maximum cost savings, the Legislature declares that an expedited process for contracts under this section is necessary. Therefore, contracts entered into on a nonbid basis shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(g) In no event shall a beneficiary be denied continued use of a drug that is part of a prescribed therapy in effect as of September 2, 1992, until the prescribed therapy is no longer prescribed.

(h) Contracts executed pursuant to this section shall be confidential and shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(i) The department shall provide individual notice to Medi-Cal beneficiaries at least 60 calendar days prior to the effective date of the deletion or suspension of any drug from the list of contract drugs. The notice shall include a description of the beneficiary's right to a fair hearing and shall encourage the beneficiary to consult a physician to determine if an appropriate substitute medication is available from Medi-Cal.

(j) In carrying out the provisions of this section, the department may contract either directly, or through the fiscal intermediary, for pharmacy consultant staff necessary to initially accomplish the treatment authorization request reviews.

(k) (1) Manufacturers shall calculate and pay interest on late or unpaid rebates. The interest shall not apply to any prior period adjustments of unit rebate amounts or department utilization adjustments.

(2) For state rebate payments, manufacturers shall calculate and pay interest on late or unpaid rebates for quarters that begin on or after the effective date of the act that added this subdivision.

(3) Following final resolution of any dispute pursuant to procedures established by the federal Health Care Financing Administration's Medicaid Drug Rebate Program Releases or regulations regarding the amount of a rebate, any underpayment by a manufacturer shall be paid with interest calculated pursuant to subdivisions (m) and (n), and any overpayment, together with

interest at the rate calculated pursuant to subdivisions (m) and (n), shall be credited by the department against future rebates due.

(*l*) Interest pursuant to subdivision (k) shall begin accruing 38 calendar days from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer. Interest shall continue to accrue until the date of mailing of the manufacturer's payment.

(m) Except as specified in subdivision (n), interest rates and calculations pursuant to subdivision (k) for medicaid rebates and state rebates shall be identical and shall be determined by the federal Health Care Financing Administration's Medicaid Drug Rebate Program Releases or regulations.

(n) If the date of mailing of a state rebate payment is 69 days or more from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer, the interest rate and calculations pursuant to subdivision (k) shall be as specified in subdivision (m), however the interest rate shall be increased by 10 percentage points. This subdivision shall apply to payments for amounts invoiced for any quarters that begin on or after the effective date of the act that added this subdivision.

(o) If the rebate payment is not received, the department shall send overdue notices to the manufacturer at 38, 68, and 98 days after the date of mailing of the invoice, and supporting utilization data. If the department has not received a rebate payment, including interest, within 180 days of the date of mailing of the invoice, including supporting utilization data, the manufacturer's contract with the department shall be deemed to be in default and the contract may be terminated in accordance with the terms of the contract. For all other manufacturers, if the department has not received a rebate payment, including interest, within 180 days of the date of mailing of the invoice, including supporting utilization data, all of the drug products of those manufacturers shall be made available only through prior authorization effective 270 days after the date of mailing of the invoice, including utilization data sent to manufacturers.

(p) If the manufacturer provides payment or evidence of payment to the department at least 40 days prior to the proposed date the drug is to be made available only through prior authorization pursuant to subdivision (o), the department shall terminate its actions to place the manufacturers' drug products on prior authorization.

(q) The department shall direct the state's fiscal intermediary to remove prior authorization requirements imposed pursuant to subdivision (o) and notify providers within 60 days after payment by the manufacturer of the rebate, including interest. If a contract was in place at the time the manufacturers' drugs were placed on prior authorization, removal of prior authorization requirements shall be

contingent upon good faith negotiations and a signed contract with the department.

(r) A beneficiary may obtain drugs placed on prior authorization pursuant to subdivision (o) if the beneficiary qualifies for continuing care status. To be eligible for continuing care status, a beneficiary must be taking the drug when its manufacturer is placed on prior authorization status. Additionally, the department shall have received a claim for the drug with a date of service that is within 100 days prior to the date the manufacturer was placed on prior authorization.

(s) A beneficiary may remain eligible for continuing care status, provided that a claim is submitted for the drug in question at least every 100 days and the date of service of the claim is within 100 days of the date of service of the last claim submitted for the same drug.

(t) Drugs covered pursuant to Sections 14105.43 and 14133.2 shall not be subject to prior authorization pursuant to subdivision (o), and any other drug may be exempted from prior authorization by the department if the director determines that an essential need exists for that drug, and there are no other drugs currently available without prior authorization that meet that need.

(u) It is the intent of the Legislature in enacting subdivisions (k) to (t), inclusive, that the department and manufacturers shall cooperate and make every effort to resolve rebate payment disputes within 90 days of notification by the manufacturer to the department of a dispute in the calculation of rebate payments.

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

SEC. 47. Section 14105.35 of the Welfare and Institutions Code is amended to read:

14105.35. (a) (1) On and after July 1, 1990, drugs included on the Medi-Cal drug formulary shall be included on the list of contract drugs until the department and the manufacturer have concluded contract negotiations or the department suspends the drug from the list of contract drugs pursuant to the provisions of this subdivision.

The department shall, in writing, invite any manufacturer with single-source drug products on the formulary as of July 1, 1990, to enter into negotiations relative to the retention of its drug or drugs. As to the issue of cost, the department shall accept the manufacturer's best price as sufficient for purposes of entering into a contract to retain the drug or drugs on the list of contract drugs.

If the department and a manufacturer enter into a contract for retention of a drug or drugs on the list of contract drugs, the drug or drugs shall be retained on the list of contract drugs for the effective term of the contract.

If a manufacturer refuses to enter into negotiations with the department pursuant to this subdivision, or if after 30 days of negotiation, the manufacturer has not agreed to execute a contract

for a drug at the manufacturer's best price, the department may suspend from the list of contract drugs the manufacturer's single-source drug in question for a period of at least 180 days. The department shall lift the suspension upon execution of a contract for that drug. Consistent with the provisions of this section, the department shall delete the Medi-Cal drug formulary specified in paragraphs (b), (c), (d), and (e) of Section 59999 of Title 22 of the California Code of Regulations.

(2) On and after July 1, 1990, the director may retain a drug on the Medi-Cal list of contract drugs even if no contract is executed with a manufacturer, if the director determines that an essential need exists for that drug, and there are no other drugs currently on the formulary that meet that need.

(3) The director may delete a drug from the list of contract drugs if the director determines that the drug presents problems of safety or misuse. The director's decision as to safety shall be based upon published medical literature, and the director's decision as to misuse shall be based on published medical literature and claims data supplied by the fiscal intermediary.

(b) Any reference to the Medi-Cal drug formulary by statute or regulation shall be construed as referring to the list of contract drugs.

(c) (1) Any drug in the process of being added to the formulary by contract agreement pursuant to Section 14105.3, executed prior to the effective date of this section, shall be added to the list of contract drugs.

(2) Contracts pursuant to Section 14105.3 executed prior to January 1, 1991, shall be considered to be contracts executed pursuant to Section 14105.33, and the department shall exempt the drugs included in these contracts from the initial therapeutic category review in which they would normally be considered.

(3) Nothing in this section shall be construed to require the department to discontinue negotiations into which it has entered with any manufacturer as of the effective date of this section. Contracts entered into as a result of these negotiations shall be exempt from the initial therapeutic category review in which they would normally be considered.

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

SEC. 48. Section 14105.37 of the Welfare and Institutions Code is amended to read:

14105.37. (a) The department shall notify each manufacturer of drugs in therapeutic categories selected pursuant to Section 14105.33 of the provisions of Sections 14105.31 to 14105.42, inclusive.

(b) If, within 45 days of notification, a manufacturer does not enter into negotiations for a contract pursuant to those sections, the department may suspend or delete from the list of contract drugs, or

refuse to consider for addition, drugs of that manufacturer in the selected therapeutic categories.

(c) If, after 150 days from the initial notification, a contract is not executed for a drug currently on the list of contract drugs, the department may suspend or delete the drug from the list of contract drugs.

(d) If, within 150 days from the initial notification, a contract is executed for a drug currently on the list of contract drugs, the department shall retain the drug on the list of contract drugs.

(e) If, within 150 days from the date of the initial notification, a contract is executed for a drug not currently on the list of contract drugs, the department shall add the drug to the list of contract drugs.

(f) The department shall terminate all negotiations 150 days after the initial notification.

(g) The department may suspend or delete any drug from the list of contract drugs at the expiration of the contract term or when the contract between the department and the manufacturer of that drug is terminated.

(h) Any drug suspended from the list of contract drugs pursuant to this section or Section 14105.35 shall be subject to prior authorization, as if that drug were not on the list of contract drugs.

(i) Any drug suspended from the list of contract drugs pursuant to this section or Section 14105.35 for at least 12 months may be deleted from the list of contract drugs in accordance with the provisions of Section 14105.38.

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

SEC. 49. Section 14105.38 of the Welfare and Institutions Code is amended to read:

14105.38. (a) (1) In the event the department determines a drug should be deleted from the list of contract drugs, the department shall conduct a public hearing, as provided in this section, to receive comment on the impact of removing the drug.

(2) (A) The department shall provide written notice 30 days prior to the hearing.

(B) The department shall send the notice required by this subdivision to the manufacturer of the drug proposed to be deleted and to organizations representing Medi-Cal beneficiaries.

(b) (1) The hearing panel shall consist of the Chief, Medi-Cal Drug Discount Program, who shall serve as chair, and the Medi-Cal Contract Drug Advisory Committee.

(2) The hearing shall be recorded and transcribed, and the transcript available for public review.

(3) Subsequent to hearing all public comment, and within 30 days of the hearing, each panel member shall submit a recommendation regarding deletion of the drug and the reason for the recommendation to the director.

(c) The director shall consider public comments provided at the hearing and the recommendations of each panel member in determining whether to delete the drug.

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

SEC. 50. Section 14105.39 of the Welfare and Institutions Code is amended to read:

14105.39. (a) (1) A manufacturer of a new single-source drug may request inclusion of its drug on the list of contract drugs pursuant to Section 14105.33 provided all of the following conditions are met:

(A) The request is made within 12 months of approval for marketing by the federal Food and Drug Administration.

(B) The manufacturer agrees to negotiate a contract with the department to provide the drug at the manufacturer's best price.

(C) (i) The manufacturer provides the department with necessary information, as specified by the department, in the request.

(ii) Notwithstanding clause (i), either of the following may be submitted by the manufacturer in lieu of the Summary Basis of Approval prepared by the federal Food and Drug Administration for that drug:

(I) The federal Food and Drug Administration's approval or approvable letter for the drug and federal Food and Drug Administration's approved labeling.

(II) The federal Food and Drug Administration's medical officers' and pharmacologists' reviews and the federal Food and Drug Administration's approved labeling.

(D) The department had concluded contracting for the therapeutic category in which the drug is included prior to approval of the drug by the federal Food and Drug Administration.

(2) Within 90 days from receipt of the request, the department shall evaluate the request using the criteria identified in subdivision (d), and shall submit the drug to the Medi-Cal Contract Drug Advisory Committee.

(b) Any petition for the addition to or deletion of a drug to the Medi-Cal drug formulary submitted prior to July 31, 1990, shall be deemed to be denied. A manufacturer who has submitted a petition deemed denied may request inclusion of that drug on the list of contract drugs provided all of the following conditions are met:

(1) The manufacturer agrees to negotiate for a contract with the department to provide the drug at the manufacturer's best price.

(2) The manufacturer provides the department with necessary information, as specified by the department, in the request.

(3) The manufacturer submits the request to the department prior to October 1, 1990.

(c) Any new drug designated as having an important therapeutic gain and approved for marketing by the federal Food and Drug

Administration on or after July 31, 1990, shall immediately be included on the list of contract drugs for a period of three years provided that all of the following conditions are met:

(1) The manufacturer offers the department its best price.

(2) The drug is typically administered in an outpatient setting.

(3) The drug is prescribed only for the indications and usage specified in the federal Food and Drug Administration approved labeling.

(4) The drug is determined by the director to be safe, relative to other drugs in the same therapeutic category on the list of contract drugs.

(d) (1) To ensure that the health needs of Medi-Cal beneficiaries are met consistent with the intent of this chapter, the department shall, when evaluating a decision to execute a contract, and when evaluating drugs for retention on, addition to, or deletion from, the list of contract drugs, use all of the following criteria:

(A) The safety of the drug.

(B) The effectiveness of the drug.

(C) The essential need for the drug.

(D) The potential for misuse of the drug.

(E) The cost of the drug.

(2) The deficiency of a drug when measured by one of these criteria may be sufficient to support a decision that the drug should not be added or retained, or should be deleted from the list. However, the superiority of a drug under one criterion may be sufficient to warrant the addition or retention of the drug, notwithstanding a deficiency in another criterion.

(e) (1) A manufacturer of single-source drugs denied a contract pursuant to this section or Section 14105.33 or 14105.37, may file an appeal of that decision with the director within 30 calendar days of the department's written decision.

(2) Within 30 calendar days of the manufacturer's appeal, the director shall request a recommendation regarding the appeal from the Medi-Cal Contract Drug Advisory Committee. The committee shall provide its recommendation in writing, within 30 calendar days of the director's request.

(3) The director shall issue a final decision on the appeal within 30 calendar days of the recommendation.

(f) Deletions made to the list of contract drugs, including those made pursuant to Section 14105.37, shall become effective no sooner than 30 days after publication of the changes in provider bulletins.

(g) Changes made to the list of contract drugs under this or any other section are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law.

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

SEC. 51. Section 14105.4 of the Welfare and Institutions Code, as amended by Section 90 of Chapter 310 of the Statutes of 1998, is amended to read:

14105.4. (a) The director shall appoint a Medi-Cal Contract Drug Advisory Committee for the purpose of providing scientific and medical analysis on drugs contained on the list of contract drugs. The duties of the committee shall be as follows:

(1) To review drugs in the Medi-Cal list of contract drugs and make written recommendations to the director as to the addition of any drug or the deletion of any drug from the list. These recommendations shall be in accordance with subdivision (d) of Section 14105.39.

(2) To review and report in writing to the director as to the comparative therapeutic effect of drugs in accordance with Section 14053.5.

(3) To prepare a fair, impartial, and independent recommendation in writing, regarding appeals from manufacturers made pursuant to subdivision (e) of Section 14105.39.

(b) The committee shall consist of at least one representative from each of the following groups:

(1) Physicians.

(2) Pharmacists.

(3) Schools of pharmacy or pharmacologists.

(4) Medi-Cal beneficiaries.

(c) Members of the committee shall be reimbursed for necessary travel and other expenses incurred in the performance of official committee duties.

(d) In order to provide sufficient scientific information and analysis in the therapeutic categories under review, the director may replace a representative if required for specific expertise.

(e) The director shall notify the committee of the decisions made on the recommendations.

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

SEC. 52. Section 14105.4 of the Welfare and Institutions Code, as amended by Section 91 of Chapter 310 of the Statutes of 1998, is amended to read:

14105.4. (a) The department shall schedule and conduct a public regulatory hearing to consider the addition of a drug to, or the deletion of a drug from, the Medi-Cal drug formulary five working days subsequent to the Medical Therapeutic and Drug Advisory Committee meeting which shall meet at least every four months. The public hearing may consist of written testimony only, and the hearing record shall be closed at the end of the public hearing.

(b) The department shall make available 45 days prior to the public hearing the department's estimate of any anticipated costs or savings to the state from adding a drug product to, or deleting a drug product from, the Medi-Cal drug formulary.

(c) Whenever the department accepts a completed petition to add a drug product to the Medi-Cal drug formulary and it is not processed pursuant to Section 14105.9, it shall be scheduled for review at the next regularly scheduled Medical Therapeutic and Drug Advisory Committee meeting and public regulatory hearing, unless the meeting and hearing are scheduled to occur within 120 days, in which case the drug product may be scheduled for the following hearing.

(d) The director shall issue a final decision regarding the drug product and shall submit any regulation adding a drug product to, or deleting a drug product from, the Medi-Cal drug formulary to the Office of Administrative Law, along with the completed rulemaking record, within seven months after the hearing prescribed in subdivision (a). This section shall not, however, be construed in a manner which results in the disapproval or invalidation of a regulation for failure to comply with the timeframes prescribed in this subdivision and subdivisions (a) and (c).

(e) (1) Except as provided in paragraph (2), the criteria used by the department in deciding whether a drug product shall be added to or deleted from the formulary shall be limited to the criteria adopted as department regulations. The criteria shall be specific and unambiguous.

(2) Notwithstanding paragraph (1), either of the following may be submitted by the manufacturer in lieu of the Summary Basis of Approval prepared by the federal Food and Drug Administration for that drug:

(A) The federal Food and Drug Administration's approval or approvable letter for the drug and federal Food and Drug Administration's approved labeling.

(B) The federal Food and Drug Administration's medical officers' and pharmacologists' reviews and the federal Food and Drug Administration's approved labeling.

(f) Departmental requests for information from persons filing drug petitions to which this section applies shall be specific and unambiguous and shall be made solely for the purpose of addressing the criteria utilized in accordance with subdivision (e).

(g) All published studies received by the department pursuant to a drug petition prior to the close of the public regulatory hearing record shall be accepted and considered by the department.

(h) Whenever the director decides to reject a petition to add a drug product to, or delete a drug product from, the formulary, the director shall notify the petitioner directly and in writing indicating the reason and specifying the criteria utilized in reaching the decision.

(i) The department shall accept a petition for a drug that has been rejected by the director upon the submission of another complete petition containing substantial new information that addresses the reason or reasons for rejection stated by the director pursuant to subdivision (h). Any petition accepted pursuant to this subdivision shall be processed in accordance with subdivision (c), or Section 14105.9, whichever is applicable.

(j) This section shall become operative on January 1, 2001.

SEC. 53. Section 14105.405 of the Welfare and Institutions Code is amended to read:

14105.405. (a) A Medi-Cal beneficiary, within 90 days of receipt of the director's notice to beneficiaries pursuant to subdivision (g) of Section 14105.33, informing them of the decision to delete or suspend a drug from the list of contract drugs, may request a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2.

(b) Any beneficiary filing a fair hearing request regarding the deletion or suspension of a drug from the formulary shall be granted a treatment authorization request for that drug until a final decision is adopted by the director. Should the beneficiary seek judicial review of the director's decision, a treatment authorization request shall be granted for that drug until a final decision is issued by the court.

(c) (1) Any Medi-Cal beneficiary, within one year of the director's decision pursuant to Section 10959, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of both the legal and factual basis for the director's decision.

(2) The director shall be the sole respondent in these proceedings.

(d) Any Medi-Cal beneficiary injured as a result of being denied a drug which is determined to be medically necessary may sue for injunctive or declaratory relief to review the director's decision to delete or suspend a drug from the list of contract drugs.

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

SEC. 54. Section 14105.41 of the Welfare and Institutions Code, as amended by Section 93 of Chapter 310 of the Statutes of 1998, is amended to read:

14105.41. (a) Moneys accruing to the department from contracts executed pursuant to Section 14105.33 shall be deposited in the Health Care Deposit Fund, and shall be subject to appropriation by the Legislature.

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

SEC. 55. Section 14105.41 of the Welfare and Institutions Code, as amended by Section 94 of Chapter 310 of the Statutes of 1998, is amended to read:

14105.41. (a) For the purpose of adding drugs to, or deleting drugs from, the Medi-Cal drug formulary as described in Section 14105.4, whether pursuant to a petition or by the department independent of a petition, all of the requirements of the Administrative Procedure Act contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall be applicable except that the requirements of subdivision (a) of Section 11340.7 and subdivision (a) of Section 11346.9 of the Government Code shall be deemed to have been complied with if the department does all of the following:

(1) Upon receipt of a petition requesting the addition of a drug to, or the deletion of a drug from, the Medi-Cal drug formulary, the department shall notify the petitioner directly and in writing of the receipt of the petition and shall, within 30 days, either return the petition as incomplete or schedule the petition for public hearing, unless the public hearing is not required pursuant to Section 14105.9.

(2) Notifies each petitioner directly and in writing of its decision regarding the addition of a drug product to, or deletion of a drug product from, the formulary and shall state the reason or reasons for its decision and the specific regulatory criteria that are the basis of the department's decision.

(3) Prepares and submits to the Office of Administrative Law with the adopted regulation all of the following for each drug which the department has decided to add to, or delete from, the Medi-Cal drug formulary:

(A) A brief summary of the comments submitted. For the purpose of this section, "comments" shall mean the major points raised in testimony which specifically address the regulatory criteria upon which the department is authorized, pursuant to subdivision (e) of Section 14105.4, to base a decision to add or delete a drug from the formulary.

(B) The recommendation of the Medical Therapeutic and Drug Advisory Committee.

(C) The decision of the department.

(D) A statement of the reason and the specific regulatory criteria that are the basis of the department's decision.

(b) Any additional information provided to the department during the posting of revisions to the proposed regulation shall be responded to by the department directly and in writing to the originator. That response shall notify the originator whether the additional information has resulted in a changed decision.

(c) For the purpose of review by the court, if any, and review and approval by the Office of Administrative Law of changes to the Medi-Cal drug formulary adopted by the department, each drug added to, or deleted from, the formulary shall be considered to be a separate regulation and shall be severable from all other additions or deletions of drugs contained in the rulemaking file.

(d) This section shall be applicable to any Medi-Cal drug formulary regulation package filed with the Office of Administrative Law on or after January 1, 2001.

(e) This section shall become operative on January 1, 2001.

SEC. 56. Section 14105.42 of the Welfare and Institutions Code, as amended by Section 95 of Chapter 310 of the Statutes of 1998, is amended to read:

14105.42. (a) The department shall report to the Legislature after the first three major therapeutic categories have been reviewed and contracts executed. The report shall include the estimated savings, number of manufacturers entering negotiations, number of contracts executed, number of drugs added and deleted, and impact on Medi-Cal beneficiaries and providers.

(b) The department shall provide the following data to the Legislature and to the State Auditor by January 1, 1991, and every six months thereafter:

(1) The number of drug treatment authorization requests (TAR) received by facsimile, by secondary answering system and in person for each therapeutic category.

(2) The number of drug TARS requested, approved, denied, and returned.

(3) The length of time between the TAR request and the decision, specified by type of communication such as telephone or facsimile if available.

(4) For denied TARS, the number of fair hearings requested, approved, denied and pending.

(5) The numbers of providers who were unable to submit a request or made multiple attempts because of faulty or unavailable lines of communication, if available.

(6) The numbers of complaints made by beneficiaries and providers relating to difficulty or inability to obtain a TAR response.

(7) The status of the enhancements to the TAR process specified in Section 21 of Chapter 457 of the Statutes of 1990.

(8) The number of calls on the TAR line which are not getting through.

(c) Until January 1, 2001, or the date of the report specified in subdivision (e), whichever is earlier, the State Auditor shall prepare a report by February 1, 1991, and every six months thereafter providing a summary and analysis of the data specified in subdivision (b), and a comparative analysis of changes in the TAR process using June 1, 1990, as a base. The analysis shall include a measure of increased or decreased ability to contact the department and receive a response in a shorter or greater period of time.

(d) The department shall report to the Legislature, through the annual budget process, on the cost-effectiveness of contracts executed pursuant to Section 14105.33.

(e) The Joint Legislative Audit Committee may review and report on the requirements imposed on the State Auditor by subdivision (c) on or before January 1, 2001.

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

SEC. 57. Section 14105.91 of the Welfare and Institutions Code is amended to read:

14105.91. The department may add a drug to the formulary which is a different dosage form, or strength of a drug product which is listed in the formulary without review by the Medical Therapeutics and Drug Advisory Committee and the addition shall be deemed to comply with the requirements of the California Administrative Procedure Act.

This section shall become operative on January 1, 2001.

SEC. 58. Section 14105.915 of the Welfare and Institutions Code is amended to read:

14105.915. The department may remove any drug from the formulary at the expiration of the contract term or when the contract between the department and the manufacturer of that drug is terminated.

This section shall become operative on January 1, 2001.

SEC. 59. Section 14105.916 of the Welfare and Institutions Code is amended to read:

14105.916. Notwithstanding any other provision of law, on and after January 1, 2001, drugs on the Medi-Cal list of contract drugs shall become the Medi-Cal drug formulary.

SEC. 60. Section 14105.981 of the Welfare and Institutions Code is amended to read:

14105.981. (a) In addition to the requirements of subdivision (t) of Section 14105.98:

(1) Except as provided in paragraph (2), the department shall take all appropriate steps permitted by law and the Medi-Cal state plan to ensure the following for all years of the payment adjustment program.

(A) That transitional inpatient days are included in the payment adjustment program in the same fashion as all other Medi-Cal days of acute inpatient hospital service.

(B) That, to the same extent as any other Medi-Cal days of acute inpatient hospital service, transitional inpatient days are included as payable days under the payment adjustment program and in the total annualized Medi-Cal inpatient paid days.

(2) In no event shall paragraph (1) be implemented in a fashion that is inconsistent with federal medicaid law or the Medi-Cal state plan or any relevant amendments thereto.

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

SEC. 61. Section 14107.11 is added to the Welfare and Institutions Code, to read:

14107.11. (a) Upon receipt of reliable evidence of fraud or willful misrepresentation by a provider under the Medi-Cal program, the department may:

(1) Collect any Medi-Cal program overpayment identified through an audit or examination, or any portion thereof from any provider. Notwithstanding Section 100171 of the Health and Safety Code, a provider may appeal the collection of overpayments under this section pursuant to procedures established in Article 5.3 (commencing with Section 14170). Overpayments collected under this section shall not be returned to the provider during the pendency of any appeal and may be offset to satisfy audit or appeal findings if the findings are against the provider. Overpayments will be returned to a provider with interest if findings are in favor of the provider.

(2) Withhold payment for any goods or services, or any portion thereof, from any Medi-Cal program provider. The department shall notify the provider within five days of any withholding of payment under this section. The notice shall do all of the following:

(A) State that payments are being withheld in accordance with this subdivision and that the withholding is for a temporary period and will not continue after it is determined that there is insufficient evidence of fraud or willful misrepresentation or when legal proceedings relating to the alleged fraud or willful misrepresentation are complete.

(B) Cite the circumstances under which the withholding of the payments will be terminated.

(C) Specify, when appropriate, the type or types of claimed payments being withheld.

(D) Inform the provider of the right to submit written evidence for consideration by the department.

(3) Notwithstanding Section 100171 of the Health and Safety Code, a provider may appeal a withholding of payment pursuant to Section 14043.65. Payments withheld under this section shall not be returned to the provider during the pendency of any appeal and may be offset to satisfy audit or appeal findings.

(b) The director may adopt regulations to implement this section as necessary. These regulations may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) Part 1 of Division 3 of Title 2 of the Government Code) and 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. The director shall transmit these emergency regulations directly to the Secretary of State for filing and the regulations shall become effective immediately upon filing. Upon completion of the formal regulation adoption process and prior to the

expiration of the 120-day duration period of emergency regulations, the director shall transmit directly to the Secretary of State the adopted regulations, the rulemaking file, and the certification of compliance as required by subdivision (e) of Section 11346.1 of the Government Code.

(c) For purposes of this section, "provider" means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, employees, or agents thereof, that provide services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary, and that has been enrolled in the Medi-Cal program.

SEC. 62. Section 14110.6 of the Welfare and Institutions Code is amended to read:

14110.6. (a) The director shall adopt regulations, establishing payment rates for nursing facilities, intermediate care facilities/developmentally disabled, and intermediate care facilities/developmentally disabled-habilitative as defined in Section 1250 of the Health and Safety Code, which are sufficient to provide an increase of one dollar and ninety-six cents ($1.96) per patient day for patients receiving skilled nursing services, one dollar and fifty-eight cents ($1.58) per patient day, for patients receiving intermediate care services, two dollars and twenty-nine cents ($2.29) per patient day for intermediate care facilities/developmentally disabled patients, to be used for wage increases and benefits to all employees, except a licensed nursing home administrator or an administrator-in-training and two dollars and thirty-five cents ($2.35) per patient day for intermediate care facilities/developmentally disabled-habilitative patients in facilities with 4 to 6 beds, and one dollar and ninety-eight cents ($1.98) per patient day for intermediate care facilities/developmentally disabled-habilitative patients in facilities with 7 to 15 beds, to be used for wage increases and benefits to all direct care staff. However, if either (1) the entry level wages of the lowest paid nonadministrative employee of a nursing facility, intermediate care facility/developmentally disabled, or intermediate care facility/developmentally disabled-habilitative, exceeds six dollars ($6) per hour as of August 1, 1984; or (2) upon the election of a county board of supervisors, for any nursing facility, intermediate care facility/developmentally disabled, or intermediate care facility/developmentally disabled-habilitative, which is operated by a county, the funds received pursuant to regulations adopted pursuant to this section shall be used solely for labor costs directly related to providing patient care services in order to meet patients' needs including the uses of funds provided for under subdivision (d) of Section 14110.7. Any increase in wages and benefits required by this section shall be in addition to any future mandatory increases required by federal or state law. The rate shall provide funding for the portion of additional costs necessary to implement the wage and

benefit increase required by this section attributable to Medi-Cal patients. The portion of those additional costs shall be the same as the ratio of Medi-Cal patients to the total number of patients in the facility. These regulations shall be adopted, effective March 15, 1985, for skilled nursing facilities, intermediate care facilities, and intermediate care facilities/developmentally disabled, and by October 1, 1985, for intermediate care facilities/developmentally disabled-habilitative. Commencing October 1, 1990, these requirements shall become operative for nursing facilities.

(b) Each nursing facility or intermediate care facility/developmentally disabled, or, for the period prior to October 1, 1990, each skilled nursing facility or intermediate care facility, shall certify all of the following:

(1) All employees, except a licensed nursing home administrator or an administrator-in-training of a licensed nursing home, shall receive at least the prevailing federal or state minimum wage rate plus the average hourly wage increase established pursuant to Chapter 19 of the Statutes of 1978, and this section.

(2) All employees of the facility, except a licensed administrator or administrator-in-training, shall be paid not less than the sum of the employee's actual rate of pay as of the effective date of the Medi-Cal rate increase provided for under Section 14110.7 plus the amount of the adjustment specified pursuant to this section, or not less than the applicable agreed to rate plus the amount of the adjustment, whichever is greater.

(3) Any wage increase required pursuant to Section 1268.5 of the Health and Safety Code, is in addition to any minimum wages provided in this section.

(4) For purposes of determining the amount of Medi-Cal funds to be distributed for employee wages and benefits, the total Medi-Cal patient days recorded by the facility in the month of December 1983 shall be multiplied by the amount per patient day specified in subdivision (a) plus the amount provided by Chapter 19 of the Statutes of 1978. The new wage levels shall be determined by dividing the Medi-Cal funds received by the nonovertime hours worked by covered employees in December 1983, plus any adjustments due to additional employees as specified in Section 14110.7 and adjustments to reflect employee benefit allowances.

(c) Each intermediate care facility/developmentally disabled-habilitative shall certify all of the following:

(1) All direct care staff, as defined in the department's regulations developed pursuant to Section 1267.7 of the Health and Safety Code, shall receive at least the prevailing federal or state minimum wage plus the average hourly wage increase pursuant to this section.

(2) For purposes of determining the amount of Medi-Cal funds to be distributed for intermediate care facilities/developmentally disabled-habilitative for employee wages and benefits, the total Medi-Cal patient days in the month of December 1984, shall be

multiplied by the amount per patient day specified in subdivision (a). The new wage level shall be determined by dividing the Medi-Cal funds received by the nonovertime hours by covered direct care employees in December 1984, and adjustments to reflect employee benefit allowances.

(d) The director shall order the inspection of relevant payroll and personnel records of facilities which are reimbursed for Medi-Cal patients under the rate of reimbursement established pursuant to subdivision (a) to ensure that the wage and benefit increases provided for have been implemented.

(e) The department shall, commencing August 1, 1999, increase the Medi-Cal reimbursement for level A and level B nursing facilities solely to provide funds for salaries, wages, and benefits increases for direct care staff. For the purposes of this subdivision, "direct care staff" means registered nurses, licensed vocational nurses, and nurse assistants, who provide direct patient care. The amount of funds to be provided to each level A and level B facility pursuant to this subdivision shall be calculated on a per patient day basis, and shall be added to the per diem rate paid to each facility. The amount of funds provided under this subdivision to each nursing facility peer group shall be published in a Medi-Cal provider bulletin. Level A and level B facilities shall compensate their registered nurses, licensed vocational nurses, and nurse assistants that portion of the rate increase provided under this subdivision in the form of salaries, wages, and benefits increases for their direct care staff. The total amount to be passed through by each facility shall be the per diem amount received by the facility pursuant to this subdivision times the facility's number of Medi-Cal patient days.

(f) Any facility which is paid under the rate provided for in subdivision (a) or (e) which the director finds has not made the wage and benefit increases provided for shall be liable for the amount of funds paid to the facility based upon the wage and benefit requirements provided for by this section but not distributed to employees for wages and benefits, plus a penalty equal to 10 percent of the funds not so distributed.

SEC. 63. Section 14110.7 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 502 of the Statutes of 1990, is amended to read:

14110.7. (a) The director shall adopt regulations increasing the minimum number of equivalent nursing hours per patient required in skilled nursing facilities to 3.2, in skilled nursing facilities with special treatment programs to 2.3, in intermediate care facilities to 1.1, and in intermediate care facilities/developmentally disabled to 2.7.

(b) (1) The director shall adopt regulations which shall establish the minimum number of equivalent nursing hours per patient required in the following, for the first year of implementation of the first year of rates established pursuant to this article:

(A) 2.6 hours for skilled nursing facilities.

(B) 1.9 hours for skilled nursing facilities with special treatment programs.

(C) 0.9 hours for intermediate care facilities.

(D) 2.2 hours for intermediate care facilities/developmentally disabled.

(2) The staffing standards established by paragraph (1) shall become effective concurrently with the establishment of the first reimbursement rates under this article.

(3) The director shall adopt regulations which establish the minimum number of equivalent nursing hours per patient required in skilled nursing facilities at 2.7 for the second year of implementation of rates established pursuant to this article.

(c) (1) The Legislature finds and declares all of the following:

(A) The one-year transition phase from 2.6 to 2.7 equivalent nursing hours allows ample time to restructure staffing.

(B) The 4 percent augmentation to reimburse for direct patient care, as defined in paragraph (2) of subdivision (b) of Section 14126.60, provides funds to cover additional expenses, if any, incurred by facilities to implement this staffing standard.

(2) Subject to the appropriation of sufficient funds, the department may adopt regulations to increase the minimum number of equivalent nursing hours required of facilities subject to this section per patient beyond 2.7 nursing hours per patient day.

(d) (1) The department shall identify those skilled nursing facilities that are in compliance with the 3.0 minimum double nursing hour standards, as defined in subdivision (a) of Section 1276.5 of the Health and Safety Code, but have actual staffing ratios below 2.5, as of July 1, 1990, and shall not enforce the 2.7 equivalent nursing hours with respect to those facilities until the third year of implementation of the rates established under this article.

(2) The department shall periodically review facilities which have actual staffing ratios described in paragraph (1) to ensure that they are making sufficient progress toward 2.7 hours.

(e) Notwithstanding paragraph (1) of subdivision (d), commencing January 1, 2000, the minimum number of nursing hours per patient day required in skilled nursing facilities shall be 3.2, without regard to the doubling of nursing hours as described in Section 1276.5 of the Health and Safety Code.

SEC. 64. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture,

and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Nursing facility services, subacute care services, and services provided by any category of intermediate care facility for the developmentally disabled, including podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in nursing facilities and any category of intermediate care facility for the developmentally disabled are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal List of Contract Drugs and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in a nursing facility or any category of intermediate care facility for the developmentally disabled.

(g) Blood and blood derivatives are covered.

(h) (1) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's California Children Services Program.

(2) For persons 21 years of age or older, the services specified in paragraph (1) shall be provided subject to the following conditions:

(A) Periodontal treatment is not a benefit.

(B) Endodontic therapy is not a benefit except for vital pulpotomy.

(C) Laboratory processed crowns are not a benefit.

(D) Removable prosthetics shall be a benefit only for patients as a requirement for employment.

(E) The director may, by regulation, provide for the provision of fixed artificial dentures that are necessary for medical conditions that preclude the use of removable dental prostheses.

(F) Notwithstanding the conditions specified in subparagraphs (A) to (E), inclusive, the department may approve services for persons with special medical disorders subject to utilization review.

(3) Paragraph (2) shall become inoperative July 1, 1995.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitation services, in a general acute care hospital

are covered, subject to utilization controls, when either of the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery.

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(q) (1) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis treatment for children 17 years of age and under, are covered.

(2) All dental hygiene services provided by a registered dental hygienist in alternative practice pursuant to Sections 1768 and 1770 of the Business and Professions Code may be covered as long as they are within the scope of Denti-Cal benefits and they are necessary services provided by a registered dental hygienist in alternative practice.

(r) (1) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

(2) All providers enrolled under this subdivision shall satisfy all applicable statutory and regulatory requirements for becoming a Medi-Cal provider.

(3) This subdivision shall be implemented only to the extent funding is available under Section 14106.6.

(s) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to those persons. These services may be provided to patients placed in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary. As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities.

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to, support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home- and community-based services waiver.

(t) Home- and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for

any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waivers.

The department shall submit a report, as provided in Section 28 of the 1982 Budget Act, 30 days prior to providing these services as Medi-Cal benefits. The report shall be submitted to the Joint Legislative Budget Committee and the fiscal committees and shall address the cost effectiveness of services provided pursuant to this subdivision.

(u) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement the provisions of this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(w) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(x) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(y) Home- and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require intermediate care or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's

needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

(z) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code, and as an in-home medical service as outlined in subdivision (s).

(aa) (1) There is hereby established in the department, a program to provide comprehensive clinical family planning services to any person who has a family income at or below 200 percent of the federal poverty level, as revised annually, and who is eligible to receive these services pursuant to the waiver identified in paragraph (2). This program shall be known as the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program.

(2) The department shall seek a waiver for a program to provide comprehensive clinical family planning services as described in paragraph (8). The program shall be operated only in accordance with the waiver and the statutes and regulations in paragraph (4) and subject to the terms, conditions, and duration of the waiver. The services shall be provided under the program only if the waiver is approved by the federal Health Care Financing Administration in accordance with Section 1396n of Title 42 of the United States Code and only to the extent that federal financial participation is available for the services.

(3) Solely for the purposes of the waiver and notwithstanding any other provision of law, the collection and use of an individual's social security number shall be necessary only to the extent required by federal law.

(4) Sections 14105.3 to 14105.39, inclusive, 14107.11, 24005, and 24013, and any regulations adopted under these statutes shall apply to the program provided for under this subdivision. No other provision of law under the Medi-Cal program or the State-Only Family Planning Program shall apply to the program provided for under this subdivision.

(5) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, without taking regulatory action, the provisions of the waiver after its approval by the federal Health Care Financing Administration and the provisions of this section by means of an all-county letter or similar instruction to providers. Thereafter, the department shall adopt regulations to implement this section and the approved waiver in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Beginning six months after the

effective date of the act adding this subdivision, the department shall provide a status report to the Legislature on a semiannual basis until regulations have been adopted.

(6) In the event that the Department of Finance determines that the program operated under the authority of the waiver described in paragraph (2) is no longer cost-effective, this subdivision shall become inoperative on the first day of the first month following the issuance of a 30-day notification of that determination in writing by the Department of Finance to the chairperson in each house that considers appropriations, the chairpersons of the committees, and the appropriate subcommittees in each house that considers the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(7) If this subdivision ceases to be operative, all persons who have received or are eligible to receive comprehensive clinical family planning services pursuant to the waiver described in paragraph (2) shall receive family planning services under the Medi-Cal program pursuant to subdivision (n) if they are otherwise eligible for Medi-Cal with no share of cost, or shall receive comprehensive clinical family planning services under the program established in Division 24 (commencing with Section 24000) either if they are eligible for Medi-Cal with a share of cost or if they are otherwise eligible under Section 24003.

(8) For purposes of this subdivision, "comprehensive clinical family planning services" means the process of establishing objectives for the number and spacing of children, and selecting the means by which those objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods, federal Food and Drug Administration approved contraceptive drugs, devices, and supplies, natural family planning, abstinence methods, and basic, limited fertility management. Comprehensive clinical family planning services include, but are not limited to, preconception counseling, maternal and fetal health counseling, general reproductive health care, including diagnosis and treatment of infections and conditions, including cancer, that threaten reproductive capability, medical family planning treatment and procedures, including supplies and followup, and informational, counseling, and educational services. Comprehensive clinical family planning services shall not include abortion, pregnancy testing solely for the purposes of referral for abortion or services ancillary to abortions, or pregnancy care that is not incident to the diagnosis of pregnancy. Comprehensive clinical family planning services shall be subject to utilization control and include all of the following:

(A) Family planning related services and male and female sterilization. Family planning services for men and women shall include emergency services and services for complications directly related to the contraceptive method, federal Food and Drug

Administration approved contraceptive drugs, devices, and supplies, and followup, consultation, and referral services, as indicated, which may require treatment authorization requests.

(B) All United States Department of Agriculture, federal Food and Drug Administration approved contraceptive drugs, devices, and supplies that are in keeping with current standards of practice and from which the individual may choose.

(C) Culturally and linguistically appropriate health education and counseling services, including informed consent, that include all of the following:

(i) Psychosocial and medical aspects of contraception.

(ii) Sexuality.

(iii) Fertility.

(iv) Pregnancy.

(v) Parenthood.

(vi) Infertility.

(vii) Reproductive health care.

(viii) Preconception and nutrition counseling.

(ix) Prevention and treatment of sexually transmitted infection.

(x) Use of contraceptive methods, federal Food and Drug Administration approved contraceptive drugs, devices, and supplies.

(xi) Possible contraceptive consequences and followup.

(xii) Interpersonal communication and negotiation of relationships to assist individuals and couples in effective contraceptive method use and planning families.

(D) A comprehensive health history, updated at next periodic visit (between 11 and 24 months after initial examination) that includes a complete obstetrical history, gynecological history, contraceptive history, personal medical history, health risk factors, and family health history, including genetic or hereditary conditions.

(E) A complete physical examination on initial and subsequent periodic visits.

SEC. 65. Section 14132.22 of the Welfare and Institutions Code is amended to read:

14132.22. (a) (1) Transitional inpatient care services, as described in this section and provided by a qualified health facility, is a covered benefit under this chapter, subject to utilization controls and subject to the availability of federal financial participation. These services shall be available to individuals needing short-term medically complex or intensive rehabilitative services, or both.

(2) The department shall seek any necessary approvals from the federal Health Care Financing Administration to ensure that transitional inpatient care services, when provided by a general acute care hospital, will be considered for purposes of determining whether a hospital is deemed to be a disproportionate share hospital pursuant to Section 1396r-4(b) of Title 42 of the United States Code or any successor statute.

(3) Transitional inpatient care services shall be available to Medi-Cal beneficiaries who do not meet the criteria for eligibility for the subacute program provided for pursuant to Section 14132.25, but who need more medically complex and intensive rehabilitative services than are generally available in a skilled nursing facility, and who are clinically stable and no longer need the level of diagnostic and ancillary services provided generally in an acute care facility.

(b) For purposes of this section, "transitional inpatient care" means the level of care needed by an individual who has suffered an illness, injury, or exacerbation of a disease, and whose medical condition has clinically stabilized so that daily physician services and the immediate availability of technically complex diagnostic and invasive procedures usually available only in the acute care hospital are not medically necessary, and when the physician assuming the responsibility of treatment management of the patient in transitional care has developed a definitive and time-limited course of treatment. The individual's care needs may be medical, rehabilitative, or both. However, the individual shall fall within one of the two following patient groups:

(1) "Transitional medical patient," which means a medically stable patient with short-term transitional care needs, whose primary barrier to discharge to a residential setting is medical status rather than functional status. These patients may require simple rehabilitation therapy, but not a rehabilitation program appropriate for multiple interrelated areas of functional disability.

(2) "Transitional rehabilitation patient," which means a medically stable patient with short-term transitional care needs, whose primary barrier to discharge to a residential setting is functional status, rather than medical status, and who has the capacity to benefit from a rehabilitation program as determined by a physiatrist or physician otherwise skilled in rehabilitation medicine. These patients may have unresolved medical problems, but these problems must be sufficiently controlled to allow participation in the rehabilitation program.

(c) In implementing the transitional inpatient care program the department shall consider the differences between the two patient groups described in paragraphs (1) and (2) of subdivision (b) and shall assure that each group's specific health care needs are met.

(d) Transitional inpatient care services shall be made available only to qualifying Medi-Cal beneficiaries who are 18 years of age or older.

(e) Transitional inpatient care services shall not be available to patients in acute care hospitals defined as small and rural pursuant to Section 124840 of the Health and Safety Code.

(f) (1) Transitional inpatient care services may be provided by general acute care hospitals that are licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. General acute care hospitals may provide transitional

inpatient care services in the acute care hospital, an acute rehabilitation center, or the distinct part skilled nursing unit of the acute care hospital. Licensed skilled nursing facilities, as defined in subdivision (c) of Section 1250 of the Health and Safety Code that are certified to participate as a nursing facility in the Medicare and medicaid programs, pursuant to Titles XVIII and XIX of the federal Social Security Act, and licensed congregate living health facilities, as defined in Section 1265.7 of the Health and Safety Code, that are certified to participate as a nursing facility in the Medicare and medicaid programs pursuant to Titles XVIII and XIX of the federal Social Security Act, may also provide the services described in subdivision (b).

(2) Costs of providing transitional inpatient care services in nonsegregated parts of the distinct part skilled nursing unit of the acute care hospital shall be determinable, in the absence of distinct and separate cost centers established for this purpose. Costs of providing transitional inpatient care services in nondistinct parts of the acute care hospital shall be determinable, in the absence of distinct and separate cost centers established for this purpose. A separate and distinct cost center shall be maintained or established for each unit in freestanding certified nursing facilities in which the services described in subdivision (b) are provided, in order to identify and segregate costs for transitional inpatient care patients from costs for other patients who may be served within the parent facility.

(g) In order to participate as a provider in the transitional inpatient care program, a facility shall meet all applicable standards necessary for participation in the Medi-Cal program and all of the following:

(1) If the health facility is a freestanding certified nursing facility, it shall be located in close proximity to a general acute care hospital with which the facility has a transfer agreement in order to support the capability to respond to medical emergencies.

(2) The health facility shall demonstrate, to the department, competency in providing high quality care to all patients for whom the facility provides care, experience in providing high quality care to the types of transitional inpatient care patients the facility proposes to serve, and the ability to provide transitional inpatient care to patients pursuant to this chapter.

(3) The health facility shall enter into a provider agreement with the department for the provision of transitional inpatient care. The provider agreement shall specify whether the facility is authorized to serve transitional medical patients or transitional rehabilitation patients or both, depending on the facility's demonstrated ability to meet standards specific to each patient group. Continuation of the provider agreement shall be contingent upon the facility's continued compliance with all the applicable requirements of this section and any other applicable laws or regulations.

(h) In determining a facility's qualifications for initial participation, an onsite review shall be conducted by the department. Subsequent review shall be conducted onsite as necessary, but not less frequently than annually. Initial and subsequent reviews shall be conducted by appropriate department personnel, which shall include a registered nurse and other health professionals where appropriate. The department shall develop written protocols for reviews.

(i) Transitional inpatient care services shall be available to patients receiving care in an acute care hospital. Under specified circumstances, as set forth in regulations, transitional inpatient care shall be available to patients transferring directly from a nursing facility level of care, a physician's office, a clinic, or from the emergency room of a general acute care hospital, provided they have received a comprehensive medical assessment conducted by a physician, and the physician determines, and documents in the medical record, that the patient has been clinically stable for the 24 hours preceding admission to the transitional inpatient care program.

(j) A health facility providing transitional inpatient care shall accept and retain only those patients for whom it can provide adequate, safe, therapeutic, and effective care, and as identified in its application for participation as a transitional inpatient care provider. The facility's determination to accept a patient into the transitional inpatient care unit shall be based on its preadmission screening process conducted by appropriate facility personnel.

(k) The department shall establish a process for providing timely, concurrent authorization and coordination, as required, of all medically necessary services for transitional inpatient care.

(*l*) The department shall adopt regulations specifying admission criteria and an admission process appropriate to each of the transitional inpatient care patient groups specified in subdivision (b). Patient admission criteria to transitional inpatient care shall include, but not be limited to, the following:

(1) Prior to admission to transitional inpatient care, the patient shall be determined to have been clinically stable for the preceding 24 hours by the attending physician and the physician assuming the responsibility of treatment management of the patient in the transitional inpatient care program.

(2) The patient shall be admitted to transitional inpatient care on the order of the physician assuming the responsibility of the management of the patient, with an established diagnosis, and an explicit time-limited course of treatment of sufficient detail to allow the facility to initiate appropriate assessments and services. No patient shall be transferred from an acute care hospital to a transitional inpatient care program that is in a freestanding certified nursing facility if the patient's attending physician documents in the

medical record that the transfer would cause physical or psychological harm to the patient.

(3) (A) Medical necessity for transitional care shall include, but not be limited to, one or more of the following:

(i) Intravenous therapy.

(ii) Rehabilitative services.

(iii) Wound care.

(iv) Respiratory therapy.

(v) Traction.

(B) The department shall develop regulations further defining the services to be provided pursuant to clauses (i) to (v), inclusive, and the circumstances under which these services shall be provided.

(m) Registered nurses shall be assigned to the transitional inpatient care unit at all times and in sufficient numbers to allow for the ongoing patient assessment, patient care, and supervision of licensed and unlicensed staff. Participating facilities shall assure that staffing is adequate in number and skill mix, at all times, to address reasonably anticipated admissions, discharges, transfers, patient emergencies, and temporary absences of staff from the transitional care unit including, but not limited to, absences to attend meetings or inservice training. All licensed and certified health care personnel shall hold valid, current licensure or certification.

(n) Continued medical assessments shall be of sufficient frequency as to adequately review, evaluate, and alter plans of care as needed in response to patients' medical progress.

(o) The department shall develop a rate of reimbursement for transitional inpatient care services for providers as specified in subdivision (f). Reimbursement rates shall be specified in regulation and in accordance with methodologies developed by the department and may include the following:

(1) All inclusive per diem rates.

(2) Individual patient specific rates according to the needs of the individual transitional care patient.

(3) Other rates subject to negotiation with the health facility.

(p) Reimbursement at transitional inpatient care rates shall only be implemented when funds are available for this purpose pursuant to the annual Budget Act. Funds expended to implement this section shall be used by providers to assure safe, therapeutic and effective patient care by staffing at levels which meet patients' needs, and to ensure that these providers have the needed resources and staff to provide quality care to transitional inpatient care patients.

(q) (1) The department shall reimburse physicians for all medically necessary care provided to transitional inpatient care patients and shall establish Medi-Cal physician reimbursement rates commensurate with those for visits to nontransitional acute care patients in acute care hospitals.

(2) It is the intent of this subdivision to cover physician costs not included in the per diem rate.

(r) No later than January 1, 2000, the department shall evaluate, and make recommendations regarding, the effectiveness and safety of the transitional inpatient care program. The evaluation shall be developed in consultation with representatives of providers, facility employees, and consumers. The department may contract for all or a portion of the evaluation. The evaluation shall be for the purpose of determining the impact of the transitional inpatient care program on patient care, including functional outcomes, if applicable, on whether the care costs less than other alternatives, and whether it results in the deterioration of patient health and safety as compared to other placements. The evaluation shall also be for the purpose of determining the effect on patients other than those receiving transitional inpatient care in participating facilities. The evaluation shall include:

(1) Data on patient mortality, patients served, length of stay, and subsequent placement or discharge.

(2) Data on readmission to acute care and emergency room transfers.

(3) Staffing standards in the facilities.

(4) Other outcome measures and indicia of patient health and safety otherwise required to be reported by federal or state law.

(s) The department shall develop regulations to amend Sections 51540 to 51556, inclusive, of Title 22 of the California Code of Regulations, to exclude the cost of transitional inpatient care services rendered in general acute care hospitals from the hospital's inpatient services reimbursement.

(t) The department may adopt emergency regulations as necessary 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 emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days. If the department adopts emergency regulations to implement this section, the department shall obtain input from interested parties to address the unique needs of medically complex and intensive rehabilitative patients qualifying for transitional inpatient care. Notwithstanding the requirements of this section, the department shall, if it adopts emergency regulations to implement this section, address the following major subject areas:

(1) Patient selection and assessment criteria, including but not limited to, preadmission screening, patient assessments, physician services, and interdisciplinary teams.

(2) Facility participation criteria and agreements, including but not limited to, facility licensing and certification history, demonstration to the department of a preexisting history in

providing care to medically complex or intensive rehabilitative patients, data reporting requirements, demonstration of continued ability to provide high quality of care to all patients, nurse staffing requirements, ancillary services, and staffing requirements.

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

SEC. 67. Section 14163 of the Welfare and Institutions Code is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) "Public entity" means a county, a city, a city and county, the State of California, the University of California, a local health care district, a local health authority, or any other political subdivision of the state.

(2) "Hospital" means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 with respect to that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, with respect to a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means an amount of intergovernmental transfer of funds that this section requires for a particular transferor entity with respect to a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state, that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

(12) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular transfer year, including all Medi-Cal acute inpatient covered days of care for hospitals that are paid on a different basis than per diem payments.

(13) "Medi-Cal acute inpatient hospital day" means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(14) "OBRA 1993 payment limitation" means the hospital-specific limitation on the total annual amount of payment adjustments to each eligible hospital under the payment adjustment program that can be made with federal financial participation under Section 1396r-4(g) of Title 42 of the United States Code as implemented pursuant to the Medi-Cal State Plan.

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to applicable provisions of this section or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Transfers to the Health Care Deposit Fund as follows:

(A) In the amount of two hundred thirty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($239,757,690) for the 1994–95 and 1995–96 fiscal years.

(B) In the amount of two hundred twenty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($229,757,690) for the 1996–97 fiscal year.

(C) In the amount of one hundred fifty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($154,757,690) for the 1997–98 fiscal year.

(D) In the amount of one hundred fourteen million seven hundred fifty-seven thousand six hundred ninety dollars ($114,757,690) for the 1998–99 fiscal year.

(E) (i) In the amount of eighty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($84,757,690) for the 1999–2000 fiscal year and each fiscal year thereafter.

(ii) It is the intent of the Legislature that the economic benefit of any reduction in the amount transferred, or to be transferred, to the Health Care Deposit Fund pursuant to this subdivision for the 1999-2000 fiscal year, as compared to the amount so transferred for the 1998-99 fiscal year, be allocated equally between public and nonpublic disproportionate share hospitals. To implement the reduction in clause (i) the department shall, by June 30, 2000, adjust the calculations in Section 14105.98 in order to allocate the funds in accordance with this clause.

(F) The transfers from the fund shall be made in six equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in October of each transfer year, and all other installments shall accrue monthly thereafter from November through March.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991–92 fiscal year issued by the department pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year.

The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible

hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year.

(g) For the 1991–92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts.

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year to determine the eligible hospitals.

(B) The payment adjustment amounts calculated under Section 14105.98 for the particular transfer year. These amounts shall take into account any projected or actual increases or decreases in the size of the payment adjustment program as are required under Section 14105.98 for the particular year in question, including any decreases resulting from the application of the OBRA 1993 payment limitation. The department may issue interim, revised, and supplemental transfer requests as necessary and appropriate to address changes in payment adjustment levels that occur under Section 14105.98. All transfer requests, or adjustments thereto, issued to transferor entities by the department shall meet the requirements set forth in subdivision (i).

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

(E) For the 1993–94 transfer year and subsequent transfer years, the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be calculated to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98, exclusive of the amounts described in paragraph (2) of this subdivision, and to satisfy the requirements of paragraph (2) of subdivision (d), for the particular transfer year. For the 1993–94 transfer year, the divisor shall be 1.742.

(F) The following provisions shall apply for certain transfer amounts relating to nonsupplemental payments under Section 14105.98:

(i) For the 1998–99 transfer year, transfer amounts shall be determined as though the payment adjustment amounts arising pursuant to subdivision (ag) of Section 14105.98 were increased by the amounts paid or payable pursuant to subdivision (af) of Section 14105.98.

(ii) Any transfer amounts paid by a transferor entity pursuant to subparagraph (C) of paragraph (2) shall serve as credit for the particular transferor entity against an equal amount of its transfer obligation for the 1998–99 transfer year.

(iii) For the 1999–2000 transfer year, transfer amounts shall be determined as though the amount to be transferred to the Health Care Deposit Fund, as referred to in paragraph (2) of subdivision (d), were reduced by 28 percent.

(2) (A) Except as provided in subparagraphs (B), (C), and (D), for the 1993–94 transfer year and subsequent transfer years, transfer amounts shall be increased for the particular transfer year in the amounts necessary to fund the nonfederal share of the total supplemental payment adjustment amounts of all types that arise under Section 14105.98. These increases shall be paid only by those transferor entities that are licensees of hospitals that are projected to receive some or all of the particular supplemental payments, and the increases shall be paid by the transferor entities on a pro rata basis in connection with the particular supplemental payments. For purposes of this paragraph, supplemental payment adjustment amounts shall be deemed to arise for the particular transfer year as of the date specified in Section 14105.98. Transfer amounts to fund the nonfederal share of the payments shall be paid for the particular transfer year within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(B) For the 1995–96 transfer year, the nonfederal share of the secondary supplemental payment adjustments described in paragraph (9) of subdivision (y) of Section 14105.96 shall be funded as follows:

(i) Ninety-nine percent of the nonfederal share shall be funded by a transfer from the University of California.

(ii) One percent of the nonfederal share shall be funded by transfers from those public entities that are the licensees of the hospitals included in the "other public hospitals" group referred to in clauses (ii) and (iii) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98. The transfer responsibilities for this 1 percent shall be allocated to the particular public entities on a pro rata basis, based on a formula or formulae customarily used by the department for allocating transfer amounts under this section. The formula or formulae shall take into account, through reallocation of transfer amounts as appropriate, the situation of hospitals whose secondary supplemental payment adjustments are restricted due to the application of the limitation set forth in clause (v) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98.

(iii) All transfer amounts under this subparagraph shall be paid by the particular transferor entities within 30 days after the department notifies the transferor entity in writing of the transfer amount to be paid.

(C) For the 1997–98 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustments described in subdivision (af) of Section 14105.98 shall be funded by a transfer from the County of Los Angeles.

(D) (i) For the 1998–99 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustment amounts arising under subdivision (ah) of Section 14105.98 shall be increased as set forth in clause (ii).

(ii) The transfer amounts otherwise calculated to fund the supplemental payment adjustments referred to in clause (i) shall be increased on a pro rata basis by an amount equal to 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d).

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts as soon as reasonably feasible regarding any particular transfer year. Written notices of transfer amounts shall be issued by the department as soon as possible with respect to each transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to accomplish these tasks. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In addition, the Office of

Statewide Health Planning and Development shall provide to the department, not later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year, from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 or 128735 of the Health and Safety Code, for hospital fiscal years that ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 or 127285 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 or 128735 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) Transfer amounts calculated by the department may be increased or decreased by a percentage amount consistent with the Medi-Cal state plan.

(5) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars ($15,000,000).

(6) Notwithstanding any other provision of law, except for subparagraph (D) of paragraph (2), the total amount of transfers required from the transferor entities for any particular transfer year shall not exceed the sum of the following:

(A) The amount needed to fund the nonfederal share of all payment adjustment amounts applicable to the particular payment adjustment year as calculated under Section 14105.98. Included in the calculations for this purpose shall be any decreases in the program as a whole, and for individual hospitals, that arise due to the provisions of Section 1396r-4(f) or (g) of Title 42 of the United States Code.

(B) The amount needed to fund the transfers to the Health Care Deposit Fund, as referred to in subdivision (d).

(7) (A) Except as provided in subparagraphs (B) and (C) and in paragraph (2) of subdivision (j), and except for a prudent reserve not to exceed two million dollars ($2,000,000) in the Medi-Cal Inpatient Payment Adjustment Fund, any amounts in the fund, including interest that accrues with respect to the amounts in the fund, that are not expended, or estimated to be required for expenditure, under Section 14105.98 with respect to a particular transfer year shall be returned on a pro rata basis to the transferor entities for the particular transfer year within 120 days after the department determines that

the funds are not needed for an expenditure in connection with the particular transfer year.

(B) The department shall determine the interest amounts that have accrued in the fund from its inception through June 30, 1995, and, no later than January 1, 1996, shall distribute these interest amounts to transferor entities:

(C) With respect to those particular amounts in the fund resulting solely from the provisions of subparagraph (D) of paragraph (2), the department shall determine by September 30, 1999, whether these particular amounts exceed 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d). Any excess amount so determined shall be returned to the particular transferor entities on a pro rata basis no later than October 31, 1999.

(D) Regarding any funds returned to a transferor entity under subparagraph (A) or (C), or interest amounts distributed to a transferor entity under subparagraph (B), the department shall provide to the transferor entity a written statement that explains the basis for the particular return or distribution of funds and contains the general calculations used by the department in determining the amount of the particular return or distribution of funds.

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments.

(2) (A) Except as provided in subparagraphs (B) and (C), for the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. However, for the 1997–98 and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in the form of periodic installments according to a timetable established by the department. The timetable shall be structured to effectuate, on a reasonable basis, the prompt distribution of all nonsupplemental payment adjustments under Section 14105.98, and transfers to the Health Care Deposit Fund under subdivision (d).

(B) For the 1994–95 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(C) For the 1995–96 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(D) Except as otherwise specifically provided, subparagraphs (A) to (C), inclusive, shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(E) All requests for transfer payments, or adjustments thereto, issued by the department shall be in writing and shall include (i) an explanation of the basis for the particular transfer request or transfer

activity, (ii) a summary description of program funding status for the particular transfer year, and (iii) the general calculations used by the department in connection with the particular transfer request or transfer activity.

(3) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with the health care provider, shall be channeled through a transferor entity or any other public entity to the fund, unless the donated funds will qualify under federal rules as a valid component of the nonfederal share of the Medi-Cal program and will be matched by federal funds. The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) (1) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(2) Where a withhold or a recoupment occurs pursuant to the provisions of paragraph (2) of subdivision (r) of Section 14105.98, the nonfederal portion of the amount in question shall remain in the fund, or shall be redeposited in the fund by the department, as applicable. The department shall then proceed as follows:

(A) If the withhold or recoupment was imposed with respect to a hospital whose licensee was a transferor entity for the particular state fiscal year to which the withhold or recoupment related, the nonfederal portion of the amount withheld or recouped shall serve as a credit for the particular transferor entity against an equal amount of transfer obligations under this section, to be applied whenever the transfer obligations next arise. Should no such transfer obligation arise within 180 days, the department shall return the funds in question to the particular transferor entity within 30 days thereafter.

(B) For other situations, the withheld or recouped nonfederal portion shall be subject to paragraph (7) of subdivision (h).

(k) All transfer amounts received by the Controller or amounts offset by the Controller shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing

on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) Except as otherwise permitted by state and federal law, no transfer amount submitted to the Controller under this section, and no offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. For transfer years prior to the 1993–94 transfer year, the percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(p) (1) Ten million dollars ($10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993–94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to offset a portion of the costs of forming the local initiative entity, and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of

developing the local initiative health delivery system in accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the medicaid program.

(q) (1) Any local initiative entity that has performed unanticipated additional work for the purposes identified in subparagraph (B) of paragraph (2) of subdivision (p) resulting in additional costs attributable to the development of its local initiative health delivery system, may file a claim for reimbursement with the department for the additional costs incurred due to delays in start dates through the 1996–97 fiscal year. The claim shall be filed by the local initiative entity not later than 90 days after the effective date of the act adding this subdivision, and shall not seek extra compensation for any sum that is or could have been asserted pursuant to the contract disputes and appeals resolution provisions of the local initiative entity's respective two-plan model contract. All claims for unanticipated additional incurred costs shall be submitted with adequate supporting documentation including, but not limited to, all of the following:

(A) Invoices, receipts, job descriptions, payroll records, work plans, and other materials that identify the unanticipated additional claimed and incurred costs.

(B) Documents reflecting mitigation of costs.

(C) To the extent lost profits are included in the claim, documentation identifying those profits and the manner of calculation.

(D) Documents reflecting the anticipated start date, the actual start date, and reasons for the delay between the dates, if any.

(2) In determining any amount to be paid, the department shall do all of the following:

(A) Conduct a fiscal analysis of the local initiative entity's claimed costs.

(B) Determine the appropriate amount of payment, after taking into consideration the supporting documentation and the results of any audit.

(C) Provide funding for any such payment, as approved by the Department of Finance through the deficiency process.

(D) Complete the determination required in subparagraph (B) within six months after receipt of a local initiative entity's completed claim and supporting documentation. Prior to final determination, there shall be a review and comment period for that local initiative entity.

(E) Make reasonable efforts to obtain federal financial participation. In the event federal financial participation is not allowed for this payment, the state's payment shall be 50 percent of the total amount determined to be payable.

SEC. 68. Section 16809 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 669 of the Statutes of 1998, is amended to read:

16809. (a) (1) The board of supervisors of a county which contracted with the department pursuant to Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, by adopting a resolution to that effect, may elect to participate in the County Medical Services Program. The County Medical Services Program shall have responsibilities for specified health services to county residents certified eligible for those services by the county.

(2) If the County Medical Services Program Governing Board contracts with the department to administer the County Medical Services Program, that contract shall include, but need not be limited to, all of the following:

(A) Provisions for the payment to participating counties for making eligibility determinations based on the formula used by the County Medical Services Program for the 1993–94 fiscal year.

(B) Provisions for payment of expenses of the County Medical Services Program Governing Board.

(C) Provisions relating to the flow of funds from counties' vehicle license fees, sales taxes, and participation fees and the procedures to be followed if a county does not pay those funds to the program.

(D) Those provisions, as applicable, contained in the 1993–94 fiscal year contract with counties under the County Medical Services Program.

(3) The contract between the department and the County Medical Services Program Governing Board shall require that the state maintain at least the level of administrative support provided to the County Medical Services Program for the 1993–94 fiscal year. The department may decline to implement decisions made by the governing board that would require a greater level of administrative support than that for the 1993–94 fiscal year. The department may implement decisions upon compensation by the governing board to cover that increased level of support.

(4) The department shall administer the County Medical Services Program pursuant to the provisions of the 1993–94 fiscal year contract with the counties and regulations relating to the administration of the program until the County Medical Services Program Governing

Board executes a contract for the administration of the County Medical Services Program and adopts regulations for that purpose.

(5) The department shall not be liable for any costs related to decisions of the County Medical Services Program Governing Board that are in excess of those set forth in the contract between the department and the County Medical Services Program Governing Board.

(b) Each county intending to participate in the County Medical Services Program pursuant to this section shall submit to the Governing Board of the County Medical Services Program a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year in which the county will participate in the County Medical Services Program.

(c) A county participating in the County Medical Services Program pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) (1) The County Medical Services Program Account is established in the County Health Services Fund. The following amounts may be deposited in the account:

(A) Any interest earned upon money deposited in the account.

(B) Moneys provided by participating counties or appropriated by the Legislature to the account.

(C) Moneys loaned pursuant to subdivision (q).

(2) The methods and procedures used to deposit funds into the account shall be consistent with the methods used by the program during the 1993–94 fiscal year.

(e) Moneys in the program account shall be used by the department, pursuant to its contract with the County Medical Services Program Governing Board, to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j) and to pay for the expense of the governing board as set forth in the contract between the board and the department.

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, County Medical Services Program Governing Board expenses, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) A separate County Medical Services Program Reserve Account is established in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to participate in the County Medical Services Program under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees as determined by the County Medical Services Program Governing Board pursuant to subdivision (i). Nothing in this section shall preclude the CMSP Governing Board from establishing other reserves.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (p) shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay participation fees as established by the County Medical Services Program Governing Board and their jurisdictional risk amount in a method that is consistent with that established in the 1993–94 fiscal year.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the CMSP Governing Board.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991–92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) (i) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars

($20,237,460) per fiscal year, except for the 1999–2000 fiscal year. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus the additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000 fiscal year. In the 1994–95 fiscal year, the amount of the state risk shall be twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, in addition to the cost of administrative support pursuant to paragraph (3) of subdivision (a).

(ii) For the 1999–2000 fiscal year, the state shall not be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus any additional cost increases for the 1999–2000 fiscal year.

(C) The CMSP Governing Board, after consultation with the department, shall establish uniform eligibility criteria and benefits for the County Medical Services Program.

(2) For the 1991–92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309
Napa	3,062,967

Nevada	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta	5,361,013
Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified by the County Medical Services Program Governing Board as participation fees.

(A)

Jurisdiction	Amount
Lake	$1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the CMSP Governing Board before a county is permitted to participate in the County Medical Services Program.

(4) For the 1994–95 and 1995–96 fiscal years, the specific amounts and method of apportioning risk to each participating county may be adjusted by the CMSP Governing Board.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts of the department pursuant to this section

shall have no force or effect unless they are approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) Third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 may be pursued.

(n) Under the program provided for in this section, the department may reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department may collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) Regulations adopted by the department pursuant to this section shall remain operative and shall be used to operate the County Medical Services Program until a contract with the County Medical Services Program Governing Board is executed and regulations, as appropriate, are adopted by the County Medical Services Program Governing Board. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, those regulations adopted under the County Medical Services Program shall become inoperative until January 1, 1998, except those regulations that the department, in consultation with the County Medical Services Program Governing Board, determines are needed to continue to administer the County Medical Services Program. The department shall notify the Office of Administrative Law as to those regulations the department will continue to use in the implementation of the County Medical Services Program.

(s) Moneys appropriated from the General Fund to meet the state risk as set forth in subparagraph (B) of paragraph (1) of subdivision (j) shall not be available for those counties electing to disenroll from the County Medical Services Program.

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

SEC. 69. Section 18993.9 of the Welfare and Institutions Code is amended to read:

18993.9. (a) This chapter shall remain operative until July 1, 2000, and shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is effective on or before January 1, 2001, deletes or extends that date.

(b) Commencing July 1, 1999, this chapter shall only be implemented if the department receives federal financial participation for its implementation pursuant to a federal waiver for family planning services provided under the State-Only Family Planning Program (Division 24 (commencing with Section 24000)).

SEC. 70. Section 24001 of the Welfare and Institutions Code is amended to read:

24001. (a) (1) For purposes of this division, "family planning" means the process of establishing objectives for the number and spacing of children, and selecting the means by which those objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods, natural family planning, abstinence methods and basic, limited fertility management. Family planning services include, but are not limited to, preconception counseling, maternal and fetal health counseling, general reproductive health care, including diagnosis and treatment of infections and conditions, including cancer, that threaten reproductive capability, medical family planning treatment and procedures, including supplies and followup, and informational, counseling, and educational services. Family planning shall not include abortion, pregnancy testing solely for the purposes of referral for abortion or services ancillary to abortions, not including contraceptives, or pregnancy care that is not incident to the diagnosis of pregnancy.

(2) Family planning services for males shall be expanded to include laboratory tests for sexually transmitted infections and comprehensive physical examinations. Within 60 days of approval of the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program, provided for pursuant to subdivision (aa) of Section 14132, the department shall seek to amend the waiver to add this expansion. The implementation of this paragraph shall be dependent upon federal approval and receipt of federal financial participation.

(b) For purposes of this division, "department" means the State Department of Health Services.

SEC. 71. Section 24003.2 is added to the Welfare and Institutions Code, to read:

24003.2. The basic preventive health services covered under this program shall include measles, mumps, and rubella vaccines for women of reproductive age. Within 60 days of approval of the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program, provided for pursuant to subdivision (aa) of Section 14132, the department shall seek to amend the waiver to add this expansion. The implementation of this section shall be dependent upon federal approval and receipt of federal financial participation.

SEC. 72. Section 24003.5 is added to the Welfare and Institutions Code, to read:

24003.5. Any male or female of reproductive age who is not at risk for pregnancy and is eligible for the program shall have available the scope of benefits provided by the program. Within 60 days of approval of the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program, provided for pursuant to subdivision (aa) of Section 14132, the department shall seek to amend the waiver to add this expansion. The implementation of this section shall be dependent upon federal approval and receipt of federal financial participation.

SEC. 73. Section 24005 of the Welfare and Institutions Code is amended to read:

24005. (a) Only licensed medical personnel with family planning skills, knowledge, and competency may provide the full range of family planning medical services covered in this program.

(b) The following requirements shall apply to the Family Planning Access Care and Treatment Waiver program identified in subdivision (aa) of Section 14132 and this program:

(1) Medi-Cal enrolled providers, as determined by the department, shall be eligible to provide family planning services under the program when these services are within their scope of practice and licensure. Those clinical providers electing to participate in the program and approved by the department shall provide the full scope of family planning education, counseling, and medical services specified for the program, either directly or by referral, consistent with standards of care issued by the department.

(2) The department shall require providers to enter into clinical agreements with the department to ensure compliance with standards and requirements to maintain the fiscal integrity of the program. All state and federal statutes and regulations pertaining to the audit or examination of Medi-Cal providers shall apply to this program.

(3) Clinical provider agreements shall be signed by the provider under penalty of perjury. The department may screen applicants at the initial application and at any reapplication pursuant to requirements developed by the department to determine provider suitability for the program.

(c) The department may complete a background check on clinical provider applicants for the purpose of verifying the accuracy of information provided in the application and in order to prevent fraud and abuse. The background check may include, but not be limited to, unannounced onsite inspection prior to enrollment, review of business records, and data searches. If discrepancies are found to exist during the preenrollment period, the department may conduct additional inspections prior to enrollment. Failure to remediate discrepancies as prescribed by the director may result in denial of the application for enrollment. Providers that do not provide services consistent with the standards of care or that do not comply with the department's rules related to the fiscal integrity of the program may be disenrolled as a provider from the program at the sole discretion of the department.

(d) The department shall not enroll any applicant that has been convicted of any felony or misdemeanor involving fraud or abuse in any government program, that has been found guilty of fraud or abuse in any civil proceeding, or that has entered into a settlement in lieu of conviction for fraud or abuse, within the previous five years. In addition, the department may deny enrollment to any applicant that, at the time of application, is under investigation. The department shall not deny enrollment to an otherwise qualified applicant whose felony or misdemeanor charges did not result in a conviction solely on the basis of the prior charges. If it is discovered that a provider is under investigation for fraud or abuse, that provider shall be subject to immediate disenrollment from the program.

(e) The program shall disenroll as a program provider any individual who, or any entity that, has a license, certificate, or other approval to provide health care, which is revoked or suspended by a federal, California, or other state's licensing, certification, or other approval authority, has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing on the license, certificate, or approval was pending. The disenrollment shall be effective on the date the license, certificate, or approval is revoked, lost, or surrendered.

(f) Subject to Article 4 (commencing with Section 19130) of Chapter 5 of Division 5 of Title 2 of the Government Code, the department may enter into contracts to secure consultant services or information technology including, but not limited to, software, data, or analytical techniques or methodologies for the purpose of fraud or abuse detection and prevention. Contracts under this section shall be exempt from the Public Contract Code.

(g) Enrolled providers shall attend specific orientation approved by the department in comprehensive family planning services. Enrolled providers who insert IUDs or contraceptive implants shall have received prior clinical training specific to these procedures.

(h) Upon receipt of reliable evidence of fraud or willful misrepresentation by a provider under the program, the department may:

(1) Collect any State-Only Family Planning program or Family Planning Access Care and Treatment Waiver program overpayment identified through an audit or examination, or any portion thereof from any provider. Notwithstanding Section 100171 of the Health and Safety Code, a provider may appeal the collection of overpayments under this section pursuant to procedures established in Article 5.3 (commencing with Section 14170) of Part 3 of Division 9. Overpayments collected under this section shall not be returned to the provider during the pendency of any appeal and may be offset to satisfy audit or appeal findings, if the findings are against the provider. Overpayments shall be returned to a provider with interest if findings are in favor of the provider.

(2) Withhold payment for any goods or services, or any portion thereof, from any State-Only Family Planning program or Family Planning Access Care and Treatment Waiver program provider. The department shall notify the provider within five days of any withholding of payment under this section. The notice shall do all of the following:

(A) State that payments are being withheld in accordance with this paragraph and that the withholding is for a temporary period and will not continue after it is determined that there is insufficient evidence of fraud or willful misrepresentation or when legal proceedings relating to the alleged fraud or willful misrepresentation are completed.

(B) Cite the circumstances under which the withholding of the payments will be terminated.

(C) Specify, when appropriate, the type or types of claimed payments being withheld.

(D) Inform the provider of the right to submit written evidence for consideration by the department.

(3) Notwithstanding Section 100171 of the Health and Safety Code, a provider may appeal a withholding of payment under this section pursuant to Section 14043.65. Payments withheld under this section shall not be returned to the provider during the pendency of any appeal and may be offset to satisfy audit or appeal findings.

(i) As used in this section:

(1) "Abuse" means either of the following:

(A) Practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, including the Family Planning Access Care and Treatment Waiver program, identified in subdivision (aa) of Section 14132, another state's medicaid program, or the State-Only Family Planning program, or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state.

(B) Practices that are inconsistent with sound medical practices and result in reimbursement, by any of the programs referred to in subparagraph (A) or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

(2) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(3) "Provider" means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, employees, or agents thereof, that provides services, goods, supplies, or merchandise, directly or indirectly, to a beneficiary and that has been enrolled in the program.

(4) "Convicted" means any of the following:

(A) A judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether there is a post-trial motion or an appeal pending or the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed.

(B) A federal, state, or local court has made a finding of guilt against an individual or entity.

(C) A federal, state, or local court has accepted a plea of guilty or nolo contendere by an individual or entity.

(D) An individual or entity has entered into participation in a first offender, deferred adjudication, or other program or arrangement where judgment of conviction has been withheld.

(5) "Professionally recognized standards of health care" means statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognize as applying to those peers practicing or providing care within a state. When the United States Department of Health and Human Services has declared a treatment modality not to be safe and effective, practitioners that employ that treatment modality shall be deemed not to meet professionally recognized standards of health care. This definition shall not be construed to mean that all other treatments meet professionally recognized standards of care.

(6) "Unnecessary or substandard items or services" means those that are either of the following:

(A) Substantially in excess of the provider's usual charges or costs for the items or services.

(B) Furnished, or caused to be furnished, to patients, whether or not covered by Medicare, medicaid, or any of the state health care programs to which the definitions of applicant and provider apply,

and which are substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care. The department's determination that the items or services furnished were excessive or of unacceptable quality shall be made on the basis of information, including sanction reports, from the following sources:

(i) The professional review organization for the area served by the individual or entity.

(ii) State or local licensing or certification authorities.

(iii) Fiscal agents or contractors, or private insurance companies.

(iv) State or local professional societies.

(v) Any other sources deemed appropriate by the department.

SEC. 74. Section 24007.5 is added to the Welfare and Institutions Code, to read:

24007.5. The program formulary shall include all federal Food and Drug Administration approved contraceptive drugs, devices, and supplies that are authorized by the Medi-Cal program.

SEC. 75. Section 24027 of the Welfare and Institutions Code is repealed.

SEC. 76. Section 24027 is added to the Welfare and Institutions Code, to read:

24027. The State-Only Family Planning Program established under this division is hereby reenacted and continued in existence in order to continue to provide comprehensive, clinical family planning services to those persons who are not eligible to receive these services under the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program established pursuant to subdivision (aa) of Section 14132, and to those persons who are not eligible to receive family planning services pursuant to subdivision (n) of Section 14132 without a share of cost.

SEC. 77. (a) Notwithstanding any other provision of law, funds appropriated pursuant to the Budget Act of 1999 for the tobacco use competitive grants program set forth in Section 104385 of the Health and Safety Code and the tobacco prevention media campaign set forth in subdivision (e) of Section 104375 of the Health and Safety Code shall be available for expenditure without regard to fiscal years until July 1, 2002.

(b) Notwithstanding any other provision of law, funds appropriated pursuant to the Budget Act of 1999 for the evaluation of the State Department of Education's tobacco use prevention education program pursuant to subdivisions (b) and (c) of Section 104375 of the Health and Safety Code, for the State Department of Education's allocation of funds for school-based tobacco use prevention pursuant to Sections 104425 and 104430 of the Health and Safety Code, and for the tobacco use prevention program set forth in Sections 104400 and 104440 of the Health and Safety Code, shall be available for expenditure without regard to fiscal year until July 1, 2002.

SEC. 78. The State Department of Health Services may adopt emergency regulations to implement the applicable provisions of this act in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 1 of Title 2 of the Government Code). The initial adoption of emergency regulations and one readoption of the initial regulations 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 and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations, and shall remain in effect for no more than 180 days.

SEC. 79. There is hereby appropriated the sum of five million dollars ($5,000,000) from the General Fund to the State Department of Health Services, in augmentation of Item 4260-111-0001 of the Budget Act of 1999, for purposes of the Partnership for Responsible Parenting Program.

SEC. 80. 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.

SEC. 81. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the administration of this act relating to health care for the entire 1999–2000 fiscal year, it is necessary that this act go into immediate effect.

CHAPTER 147

An act to repeal Sections 14669.16 and 15817.5 of the Government Code, to amend Sections 1596.8713 and 11970 of, and to add and repeal Article 4 (commencing with Section 11970.1) of Chapter 2 of Part 3 of Division 10.5 of, the Health and Safety Code, to amend Sections 1252.3 and 1611.5 of the Unemployment Insurance Code, to amend Sections 9564, 11370, 11450, 11450.16, 11461, 11462, 11463, 11465, 14132.90, 15200.81, 15204.3, 16164, 18358.30, 18930, 18930.5, 18932, 18934, 18938, 18940, 18944, 19091, 19092, 19355.5, 19356.6,

19356.7, and 19806 of, to add Sections 10609.4, 11371, 11372, 11373, 15766, 16501.3, and 18935 to, to repeal Section 12200.018 of, and to repeal and add Sections 11364 and 11369 of, the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 14669.16 of the Government Code is repealed.

SEC. 2. Section 15817.5 of the Government Code is repealed.

SEC. 4. Section 1596.8713 of the Health and Safety Code is amended to read:

1596.8713. (a) The Department of Justice may charge a fee sufficient to cover its costs in providing services in accordance with Section 1596.871 to comply with the 14-day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1596.871.

(b) Effective January 1, 2000, no fee shall be charged by the Department of Justice or the State Department of Social Services for the processing of fingerprints, excluding the rolling fees; or for obtaining a California or Federal Bureau of Investigation criminal record, of an applicant or person specified in subdivision (b) of Section 1596.871 when funds for those purposes are appropriated in the annual Budget Act.

SEC. 5. Section 11970 of the Health and Safety Code is amended to read:

11970. (a) This article shall be known and may be cited as the Drug Court Partnership Act of 1998.

(b) The Drug Court Partnership shall be administered by the State Department of Alcohol and Drug Programs for the purpose of demonstrating the cost-effectiveness of drug courts operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation. The department shall design and implement the program with the concurrence of the Judicial Council.

(1) This program shall award grants on a competitive basis for four years to counties that develop and implement drug court programs operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation which are likely to provide the greatest public safety benefit and be most effective in reducing state and local costs.

(2) To be eligible for this grant, the county alcohol and drug program administrator and the presiding judge shall submit a

multiagency plan that identifies the resources and strategies for providing an effective drug court program. The department, in collaboration with the Judicial Council, shall establish minimum criteria for evaluating the plans.

(c) The plan shall include, but not be limited to, the following components:

(1) Development of information-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the grantee in achieving its goals.

(2) Identification of outcome measures, which shall include, but not be limited to, the following:

(A) The annual number of misdemeanor and felony convictions of persons participating in the program for a minimum of two years after entry into the program.

(B) The annual number of admissions to county jail and state prison of persons participating in the program for a minimum of two years after entry into the program.

(C) Other outcome measures identified by the department and the Judicial Council that will assist in determining the cost-effectiveness of the program.

(d) For the purposes of this section, the grants that are initially awarded using funds appropriated in the Budget Act of 1998 shall be known as "first-round grants" and the grants initially awarded using funds appropriated in the Budget Act of 1999 shall be known as "second-round grants."

(e) The department, in collaboration with the Judicial Council, shall award both first-round and second-round grants that provide funding for four years, subject to appropriation in the Budget Act. Funding shall be used to supplement, rather than supplant, existing programs.

(1) Grant funds shall be used for programs that are identified in the local plan. Acceptable uses may include, but are not limited to, the following: drug court coordinators, training, drug testing, treatment, transportation, and other costs related to the implementation of the plan.

(2) No grant shall be awarded unless the applicant makes available resources in an amount equal to at least 10 percent of the amount of the grant in years one and two, and 20 percent of the amount of the grant in years three and four.

(f) The department, with concurrence from the Judicial Council, shall establish minimum standards for use of funds in drug courts operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation, funding schedules, and procedures for awarding grants, which shall take into consideration, but not be limited to, all of the following:

(1) The number of participants who will be served in the program.

(2) Demonstrated commitment to exceed the minimum match requirement, such as in-kind contributions from participating agencies.

(3) Demonstrated ability to provide treatment to clients who will be served through the program.

(4) Demonstrated capacity to administer the program.

(5) Demonstrated ability to report outcome measures for program participants and for participants in other comparable drug court programs administered in the county.

(6) Demonstrated commitment to the program of participating local agencies and the court.

(7) Demonstrated commitment by the drug court to meet the standard of judicial administration.

(g) The department, in collaboration with the Judicial Council, shall create an evaluation design for the Drug Court Partnership that will assess the effectiveness of the program. The department, together with the Judicial Council, shall develop an interim report to be submitted to the Legislature on or before March 1, 2000, and a final analysis of the grant program in a report to be submitted to the Legislature on or before March 1, 2002.

SEC. 6. Article 4 (commencing with Section 11970.1) is added to Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code, to read:

Article 4. Comprehensive Drug Court Implementation Act of 1999

11970.1. (a) This article shall be known and may be cited as the Comprehensive Drug Court Implementation Act of 1999.

(b) This article shall be administered by the State Department of Alcohol and Drug Programs.

(c) The department and the Judicial Council shall design and implement this article through the Drug Court Partnership Executive Steering Committee established under the Drug Court Partnership Act of 1998 pursuant to Section 11970, for the purpose of funding cost-effective local drug court systems for adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court.

11970.2. (a) A county alcohol and drug program administrator and the presiding judge in the county shall develop and submit a comprehensive multiagency drug court plan for implementing cost-effective local drug court systems for adults, juveniles, and parents of children who are detained by, or are dependents of the juvenile court to be eligible for funding under this chapter. The plan shall do all of the following:

(1) Describe existing programs that serve substance abusing adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court.

(2) Provide a local action plan for implementing cost-effective drug court systems, including any or all of the following drug court systems:

(A) Drug courts operating pursuant to Sections 1000 to 1000.5, inclusive, of the Penal Code.

(B) Drug courts for juvenile offenders.

(C) Drug courts for parents of children who are detained by, or are dependents of, the juvenile court.

(D) Other drug court systems that are approved by the Drug Court Partnership Executive Steering Committee.

(3) Develop information-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the local action plan in achieving its goals.

(4) Identify outcome measures that will determine the cost effectiveness of the local action plan.

(b) The department, in collaboration with the Judicial Council, shall distribute funds to eligible counties using the two thousand five hundred dollars ($2,500) per million/remainder per capita methodology, subject to appropriation in the Budget Act. Funding shall be used to supplement, rather than supplant, existing programs. Funding for counties that opt not to participate in the program shall be distributed on a per capita basis to participating counties.

(1) Funds distributed to counties shall be used for programs that are identified in the local plan. Acceptable uses may include, but are not limited to, any of the following: drug court coordinators, case management, training, drug testing, treatment, transportation, and other costs related to the implementation of the plan.

(2) No funds shall be distributed unless the applicant makes available resources in an amount equal to at least 10 percent of the amount of the funds distributed in years one and two, and 20 percent of the amount of the funds distributed in years three, four, and five.

(c) The department, with concurrence from the Judicial Council, shall establish minimum standards, funding schedules, and procedures for funding programs.

(d) The department, in collaboration with the Judicial Council, shall create an evaluation design for the Comprehensive Drug Court Implementation Act of 1999, that will assess the effectiveness of the program. The department, together with the Judicial Council, shall develop an interim report to be submitted to the Legislature on or before March 1, 2004, and a final analysis of the program in a report to be submitted to the Legislature on or before March 1, 2005.

11970.3. (a) It is the intent of the Legislature that this chapter be funded by an appropriation in the annual Budget Act.

(b) Up to 5 percent of the amount appropriated by the annual Budget Act is available to the department and the Judicial Council to administer the program, including technical assistance to counties and development of an evaluation component.

11970.4. This article shall remain operative only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 7. Section 1252.3 of the Unemployment Insurance Code is amended to read:

1252.3. (a) Notwithstanding Section 1252, an individual is also "unemployed," as determined by the director, if (1) the individual has been laid off from work or is unable to commence work as a direct result of freezing weather conditions that occurred in this state from December 20, 1998, to December 28, 1998, inclusive, at the individual's most recent workplace or regular seasonal workplace, (2) the individual's continuing unemployment is a direct result of the freezing weather, (3) the wages payable to the individual for any week of less than full-time work, when reduced by two hundred dollars ($200), do not equal or exceed the individual's weekly benefit amount, (4) the individual resides in a county that is covered under the terms of Order 1267-DR of the Federal Emergency Management Agency relative to the freezing weather of December 1998, and (5) the individual is otherwise eligible to receive benefits under this part.

(b) This section shall become inoperative and shall be repealed on August 7, 1999.

SEC. 7.5. Section 1611.5 of the Unemployment Insurance Code is amended to read:

1611.5. (a) Notwithstanding Section 1611, the Legislature may appropriate from the Employment Training Fund twenty million dollars ($20,000,000) in the Budget Act of 1997 and five million dollars ($5,000,000) in the Budget Act of 1999 for training programs designed for workers who are current or recent recipients of benefits under the CalWORKs program pursuant to Section 10214.7. The Legislature may appropriate from the Employment Training Fund thirty million dollars ($30,000,000) in the Budget Act of 1999 for purposes of funding the local assistance portion of welfare-to-work activities under the CalWORKs program, provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, as administered by the State Department of Social Services.

(b) Funds available pursuant to the Budget Act of 1997 pursuant to this section that are not encumbered in the 1997–98 fiscal year may, upon appropriation by the Legislature, be carried over into the 1998–99 fiscal year for expenditures consistent with Section 10214.7.

SEC. 8. Section 9564 of the Welfare and Institutions Code is amended to read:

9564. Nothing in this chapter shall preclude expansion of Multipurpose Senior Services Program services if cost effectiveness is demonstrated. The expansion shall be accomplished by establishing new sites, increasing numbers of clients served in existing sites, or by expanding the number of sites to include additional geographic regions of the state.

SEC. 9. Section 10609.4 is added to the Welfare and Institutions Code, to read:

10609.4. (a) On or before July 1, 2000, the State Department of Social Services, in consultation with county and state representatives, foster youth, and advocates, shall do both of the following:

(1) Develop statewide standards for the implementation and administration of the Independent Living Program established pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

(2) Define the outcomes for the Independent Living Program and the characteristics of foster youth enrolled in the program for data collection purposes.

(b) Each county department of social services shall include in its annual Independent Living Program report both of the following:

(1) An accounting of federal and state funds allocated for implementation of the program. Expenditures shall be related to the specific purposes of the program. Program purposes may include, but are not limited to, all of the following:

(A) Enabling participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training, and providing job readiness training and placement services, or building work experience and marketable skills, or both.

(B) Providing training in daily living skills, budgeting, locating and maintaining housing, and career planning.

(C) Providing for individual and group counseling.

(D) Integrating and coordinating services otherwise available to participants.

(E) Providing each participant with a written transitional independent living plan that will be based on an assessment of his or her needs and that will be incorporated into his or her case plan.

(F) Providing participants with other services and assistance designed to improve independent living.

(2) A detail of the characteristics of foster youth enrolled in their independent living programs and the outcomes achieved based on the information developed by the department pursuant to subdivision (a).

(c) In consultation with the department, a county may use different methods and strategies to achieve the standards and outcomes of the Independent Living Program developed pursuant to subdivision (a).

SEC. 10. Section 11364 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 11364 is added to the Welfare and Institutions Code, to read:

11364. Notwithstanding subdivision (a) of Section 11450, the rate paid on behalf of children eligible for a Kin-GAP payment shall equal 100 percent of the rate for children placed in a licensed or approved

home as specified in subdivisions (a) to (d), inclusive, of Section 11461.

SEC. 12. Section 11369 of the Welfare and Institutions Code is repealed.

SEC. 13. Section 11369 is added to the Welfare and Institutions Code, to read:

11369. (a) Notwithstanding the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, through June 30, 2000, the department may implement the applicable provisions of the Kin-GAP Program through all county letters or similar instructions from the director.

(b) The director shall adopt regulations as otherwise necessary, to implement the applicable provisions of the Kin-GAP Program no later than July 1, 2000. Emergency regulations to implement the applicable provisions of this act may be adopted by the director in accordance with the Administrative Procedure Act. The initial adoption of the emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety or general welfare. Initial emergency regulations and the first readoption of those emergency regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days.

SEC. 14. Section 11370 of the Welfare and Institutions Code is amended to read:

11370. The provisions of this article shall become operative on January 1, 2000.

SEC. 15. Section 11371 is added to the Welfare and Institutions Code, to read:

11371. Income to the child, including the Kin-GAP payment, shall not be considered income to the kinship guardian for purposes of determining the kinship guardian's eligibility for any other aid program, unless required by federal law as a condition of the receipt of federal financial participation.

SEC. 16. Section 11372 is added to the Welfare and Institutions Code, to read:

11372. Notwithstanding any other provision of state law, the department shall have the authority to exempt children in receipt of Kin-GAP benefits from any Cal-WORKs requirement that the department deems necessary so long as the exemption would not jeopardize federal financial participation in the payment. Any exemptions exercised pursuant to this section shall be implemented in accordance with Section 11369.

SEC. 17. Section 11373 is added to the Welfare and Institutions Code, to read:

11373. Two years after the implementation date of this article, and again five years after the implementation date of this article, the department shall report to the Legislature information on the outcomes of the Kin-GAP Program, with the report to include all of the following:

(a) The number and characteristics of the children who exited the child welfare system to the Kin-GAP Program.

(2) The numbers and types of disruptions to the Kin-GAP Program, including subsequent substantiated child abuse reports, child welfare services, and cases where children return to foster care.

(3) Rates of Kin-GAP exits from foster care compared to relative adoption and return to parents.

SEC. 18. Section 11450 of the Welfare and Institutions Code is amended to read:

11450. (a) (1) Aid shall be paid for each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter. In determining the amount of aid paid, and notwithstanding the minimum basic standards of adequate care specified in Section 11452, the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1 shall be deducted from the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2). In no case shall the amount of aid paid for each month exceed the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2), plus any special needs, as specified in subdivisions (c), (e), and (f):

Number of eligible needy persons in the same home	Maximum aid
1	$ 326
2	535
3	663
4	788
5	899
6	1,010
7	1,109
8	1,209
9	1,306
10 or more	1,403

If, when, and during such times as the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(2) The sums specified in paragraph (1) shall not be adjusted for cost of living for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, nor shall that amount be included in the base for calculating any cost-of-living increases for any fiscal year thereafter. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother for the month in which the birth is anticipated and for the three-month period immediately prior to the month in which the birth is anticipated in the amount which would otherwise be paid to one person, as specified in subdivision (a), if the mother, and child if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision. Aid shall also be paid to a pregnant woman with no other children in the amount which would otherwise be paid to one person under subdivision (a) at any time after verification of pregnancy if the pregnant woman is also eligible for the Cal-Learn Program described in Article 3.5 (commencing with Section 11331) and if the mother and child, if born, would have qualified for aid under this chapter.

(c) The amount of forty-seven dollars ($47) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462,

11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping service, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant or which is otherwise available to the county welfare department and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(A) (i) A nonrecurring special need of forty dollars ($40) a day shall be available to families for the costs of temporary shelter, subject

to the requirements of this paragraph. County welfare departments may increase the daily amount available for temporary shelter to large families as necessary to secure the additional bed space needed by the family.

(ii) This special need shall be granted or denied immediately upon the family's application for homeless assistance, and benefits shall be available for up to three working days. The county welfare department shall verify the family's homelessness within the first three working days and if the family meets the criteria of questionable homelessness established by the department, the county welfare department shall refer the family to its early fraud prevention and detection unit, if the county has such a unit, for assistance in the verification of homelessness within this period.

(iii) After homelessness has been verified, the three-day limit shall be extended for a period of time which, when added to the initial benefits provided, does not exceed a total of 16 calendar days. This extension of benefits shall be done in increments of one week and shall be based upon searching for permanent housing which shall be documented on a housing search form; good cause; or other circumstances defined by the department. Documentation of housing search shall be required for the initial extension of benefits beyond the three-day limit and on a weekly basis thereafter as long as the family is receiving temporary shelter benefits. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing while receiving temporary shelter benefits.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence.

The last month's rent portion of the payment (1) shall not exceed 80 percent of the family's maximum aid payment without special needs for a family of that size and (2) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's maximum aid payment without special needs for a family of that size, in accordance with the maximum aid schedule specified in subdivision (a).

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (2) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family

presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) (i) Except as provided in clauses (ii) and (iii), eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to this paragraph shall be limited to one period of up to 16 consecutive calendar days of temporary assistance and one payment of permanent assistance. Any family that includes a parent or nonparent caretaker relative living in the home who has previously received temporary or permanent homeless assistance at any time on behalf of an eligible child shall not be eligible for further homeless assistance. Any person who applies for homeless assistance benefits shall be informed that the temporary shelter benefit of up to 16 consecutive days is available only once in a lifetime, with certain exceptions, and that a break in the consecutive use of the benefit constitutes permanent exhaustion of the temporary benefit.

(ii) A family that becomes homeless as a direct and primary result of a state or federally declared natural disaster shall be eligible for temporary and permanent homeless assistance.

(iii) A family shall be eligible for temporary and permanent homeless assistance when homelessness is a direct result of domestic violence by a spouse, partner, or roommate; physical or mental illness that is medically verified that shall not include a diagnosis of alcoholism, drug addiction, or psychological stress; or, the uninhabitability of the former residence caused by sudden and unusual circumstances beyond the control of the family including natural catastrophe, fire, or condemnation. These circumstances shall be verified by a third-party governmental or private health and human services agency and homeless assistance payments based on these specific circumstances may not be received more often than once in any 12-month period. A county may require that a recipient of homeless assistance benefits who qualifies under this paragraph for a second time in a 24-month period participate in a homelessness avoidance case plan as a condition of eligibility for homeless assistance benefits.

(iv) The county welfare department shall report to the department through a statewide homeless assistance payment indicator system, necessary data, as requested by the department, regarding all recipients of aid under this paragraph.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in

their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(I) No payment shall be made pursuant to this paragraph unless the provider of housing is a commercial establishment, shelter, or person in the business of renting properties who has a history of renting properties.

(g) The department shall establish rules and regulations assuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

(j) For children receiving Kin-GAP pursuant to Article 4.5 (commencing with Section 11360) of Chapter 2, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month, which, when added to the child's income, is equal to the rate specified in Section 11364.

SEC. 19. Section 11450.16 of the Welfare and Institutions Code is amended 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 Kin-GAP payments under Section 11364, 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. 20. Section 11461 of the Welfare and Institutions Code is amended to read:

11461. (a) For children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, the per child per month rates in the following schedule shall be in effect for the period July 1, 1989, through December 31, 1989:

Age	Basic rate
0–4	$ 294
5–8	319
9–11	340
12–14	378
15–20	412

(b) (1) Any county that, as of October 1, 1989, has in effect a basic rate that is at the levels set forth in the schedule in subdivision (a), shall continue to receive state participation, as specified in subdivision (c) of Section 15200, at these levels.

(2) Any county that, as of October 1, 1989, has in effect a basic rate that exceeds a level set forth in the schedule in subdivision (a), shall

continue to receive the same level of state participation as it received on October 1, 1989.

(c) The amounts in the schedule of basic rates in subdivision (a) shall be adjusted as follows:

(1) Effective January 1, 1990, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 12 percent.

(2) Effective May 1, 1990, any county that did not increase the basic rate by 12 percent on January 1, 1990, shall do both of the following:

(A) Increase the basic rate in effect December 31, 1989, for which state participation is received by 12 percent.

(B) Increase the basic rate, as adjusted pursuant to subparagraph (A) by an additional 5 percent.

(3) (A) Except as provided in subparagraph (B), effective July 1, 1990, for the 1990–91 fiscal year, the amounts in the schedule of basic rates in subdivision (a) shall be increased by an additional 5 percent.

(B) The rate increase required by subparagraph (A) shall not be applied to rates increased May 1, 1990, pursuant to paragraph (2).

(4) Effective July 1, 1998, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 6 percent. Notwithstanding any other provision of law, the 6-percent increase provided for in this paragraph shall, retroactive to July 1, 1998, apply to every county, including any county to which paragraph (2) of subdivision (b) applies, and shall apply to foster care for every age group.

(5) Notwithstanding any other provision of law, any increase that takes effect after July 1, 1998, shall apply to every county, including any county to which paragraph (2) of subdivision (b) applies, and shall apply to foster care for every age group.

(6) The increase in the basic foster family home rate shall apply only to children placed in a licensed foster family home receiving the basic rate or in an approved home of a relative or nonrelated legal guardian receiving the basic rate. The increased rate shall not be used to compute the monthly amount that may be paid to licensed foster family agencies for the placement of children in certified foster homes.

(d) (1) (A) Beginning with the 1991–92 fiscal year, the schedule of basic rates in subdivision (a) shall be adjusted by the percentage changes in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.

(B) In addition to the adjustment in subparagraph (A) effective January 1, 2000, the schedule of basic rates in subdivision (a) shall be increased by 2.36 percent rounded to the nearest dollar.

(2) (A) Any county that, as of the 1991–92 fiscal year, receives state participation for a basic rate that exceeds the amount set forth in the schedule of basic rates in subdivision (a) shall receive an increase each year in state participation for that basic rate of one-half

of the percentage adjustments specified in paragraph (1) until the difference between the county's adjusted state participation level for its basic rate and the adjusted schedule of basic rates is eliminated.

(B) Notwithstanding subparagraph (A), all counties for the 1999–2000 fiscal year shall receive an increase in state participation for the basic rate of the entire percentage adjustment described in paragraph (1).

(3) If a county has, after receiving the adjustments specified in paragraph (2), a state participation level for a basic rate that is below the amount set forth in the adjusted schedule of basic rates for that fiscal year, the state participation level for that rate shall be further increased to the amount specified in the adjusted schedule of basic rates.

(e) (1) As used in this section, "specialized care increment" means an approved amount paid with state participation on behalf of an AFDC-FC child requiring specialized care to a home listed in subdivision (a) in addition to the basic rate. On the effective date of this section, the department shall continue and maintain the current ratesetting system for specialized care.

(2) Any county that, as of the effective date of this section, has in effect specialized care increments that have been approved by the department, shall continue to receive state participation for those payments.

(3) Any county that, as of the effective date of this section, has in effect specialized care increments that exceed the amounts that have been approved by the department, shall continue to receive the same level of state participation as it received on the effective date of this section.

(4) (A) Except for subparagraph (B), beginning January 1, 1990, specialized care increments shall be adjusted in accordance with the methodology for the schedule of basic rates described in subdivision (c). No county shall receive state participation for any increases in a specialized care increment which exceeds the adjustments made in accordance with this methodology.

(B) Notwithstanding subdivision (e) of Section 11460, for the 1993–94 fiscal year, an amount equal to 5 percent of the State Treasury appropriation for family homes shall be added to the total augmentation for the AFDC-FC program in order to provide incentives and assistance to counties in the area of specialized care. This appropriation shall be used, but not limited to, encouraging counties to implement or expand specialized care payment systems, to recruit and train foster parents for the placement of children with specialized care needs, and to develop county systems to encourage the placement of children in family homes. It is the intent of the Legislature that in the use of these funds, federal financial participation shall be claimed whenever possible.

(f) (1) As used in this section, "clothing allowance" means the amount paid with state participation in addition to the basic rate for

the provision of additional clothing for an AFDC-FC child, including, but not limited to, an initial supply of clothing and school or other uniforms.

(2) Any county that, as of the effective date of this section, has in effect clothing allowances, shall continue to receive the same level as it received on the effective date of this section.

(3) Beginning January 1, 1990, clothing allowances shall be adjusted annually in accordance with the methodology for the schedule of basic rates described in subdivision (c). No county shall be reimbursed for any increases in clothing allowances which exceed the adjustments made in accordance with this methodology.

SEC. 21. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each rate classification level (RCL) has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, "standardized schedule of rates" means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home

operator projects will be provided during the period of time for which the rate is being established.

(1) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the field work portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under the provisions of Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) The standardized schedule of rates for fiscal year 1998–99 is:

Rate Classification Level	Point Ranges	FY 1998-99 Standard Rate
1	Under 60	$1,254
2	60- 89	1,567
3	90-119	1,879
4	120-149	2,191
5	150-179	2,502
6	180-209	2,815
7	210-239	3,127
8	240-269	3,440
9	270-299	3,751
10	300-329	4,064
11	330-359	4,375
12	360-389	4,688
13	390-419	5,003
14	420 & Up	5,314

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county; that the provider is capable of effectively and efficiently operating the program; and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) (1) For the purpose of this subdivision, "program change" means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) For the 1998–99 and 1999–2000 fiscal years, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 1999, and as adjusted pursuant to subparagraph (B) of paragraph (1) of subdivision (g), except as provided in paragraph (3).

(3) (A) For the 1998–99 and 1999–2000 fiscal years, the department shall not establish a rate for a new program of a new or

existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the conditions specified in this paragraph are met.

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if (i) the licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program, and (ii) the new program or program change will result in a reduction of referrals to state hospitals during the 1998–99 fiscal year.

(*l*) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care which may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

SEC. 22. Section 11463 of the Welfare and Institutions Code is amended to read:

11463. (a) The department, with the advice, assistance, and cooperation of the counties and foster care providers, shall develop, implement, and maintain a ratesetting system for foster family agencies.

No county shall be reimbursed for any percentage increases in payments, made on behalf of AFDC-FC funded children who are placed with foster family agencies, which exceed the percentage cost-of-living increase provided in any fiscal year beginning on January 1, 1990, as specified in subdivision (c) of Section 11461.

(b) The department shall develop regulations specifying the purposes, types, and services of foster family agencies, including the

use of those agencies for the provision of emergency shelter care. Distinction for ratesetting purposes shall be drawn between foster family agencies which provide treatment of children in foster families and those which provide nontreatment services.

(c) The department shall develop and maintain regulations specifying the procedure for the appeal of department decisions about the setting of an agency's rate.

(d) On and after July 1, 1998, the schedule of rates, and the components used in the rate calculations specified in the department's regulations, for foster family agencies shall be increased by 6 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new schedule of rates for foster family agencies.

(e) (1) On and after July 1, 1999, the schedule of rates and the components used in the rate calculations specified in the department's regulations for foster family agencies shall be adjusted by an amount equal to the California Necessities Index computed pursuant to Section 11453, rounded to the nearest dollar. The resultant amounts shall constitute the new schedule of rates for foster family agencies, subject to further adjustment pursuant to paragraph (2).

(2) In addition to the adjustment specified in paragraph (1), commencing January 1, 2000, the schedule of rates and the components used in the rate calculations specified in the department's regulations for foster family agencies shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new schedule of rates for foster family agencies.

(f) For the 1999–2000 fiscal year, foster family agency rates that are not determined by the schedule of rates set forth in the department's regulations, shall be increased by the same percentage as provided in subdivision (e).

SEC. 23. Section 11465 of the Welfare and Institutions Code is amended to read:

11465. (a) When a child is living with a parent who receives AFDC-FC or Kin-GAP benefits, the rate paid to the provider on behalf of the parent shall include an amount for care and supervision of the child.

(b) For each category of eligible licensed community care facility, as defined in Section 1502 of the Health and Safety Code, the department shall adopt regulations setting forth a uniform rate to cover the cost of care and supervision of the child in each category of eligible licensed community care facility.

(c) (1) On and after July 1, 1998, the uniform rate to cover the cost of care and supervision of a child pursuant to this section shall be increased by 6 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new uniform rate.

(2) (A) On and after July 1, 1999, the uniform rate to cover the cost of care and supervision of a child pursuant to this section shall

be adjusted by an amount equal to the California Necessities Index computed pursuant to Section 11453, rounded to the nearest dollar. The resultant amounts shall constitute the new uniform rate, subject to further adjustment pursuant to paragraph (B).

(B) In addition to the adjustment specified in subparagraph (A), on and after January 1, 2000, the uniform rate to cover the cost of care and supervision of a child pursuant to this section shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new uniform rate.

(3) Subject to the availability of funds, for the 2000–01 fiscal year and annually thereafter, these rates shall be adjusted for cost of living pursuant to procedures in Section 11453.

SEC. 24. Section 12200.018 of the Welfare and Institutions Code is repealed.

SEC. 32. Section 14132.90 of the Welfare and Institutions Code 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, 2000, the projected costs for the 1999–2000 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, 2000. The Department of Alcohol and Drug Programs shall report to the Legislature, no later than January 1, 2000, on the impact of the provisions specified in this paragraph on client access to outpatient drug abuse services.

(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).

(d) For the 1999–2000 fiscal year and each fiscal year thereafter, there shall be separate annual fiscal year General Fund appropriations for drug Medi-Cal perinatal services (Item 4200-104-0001 of the Budget Act), drug Medi-Cal nonperinatal services (Item 4200-103-0001 of the Budget Act), nondrug Medi-Cal perinatal services (Item 4200-102-0001 of the Budget Act), and nondrug Medi-Cal nonperinatal services (Item 4200-101-0001 of the Budget Act).

(e) Notwithstanding any other provision of law, the State Department of Alcohol and Drug Programs shall maintain a contingency reserve of the reappropriated General Fund moneys for the purpose of drug Medi-Cal program expenditures.

(f) Unexpended General Fund moneys appropriated for the drug Medi-Cal program may be transferred for use as nondrug Medi-Cal county expenditures in the current or budget years. Unexpended General Fund moneys shall not be transferred from nondrug Medi-Cal to the drug Medi-Cal program for purposes of providing matching funds for federal financial participation.

SEC. 34. Section 15200.81 of the Welfare and Institutions Code is amended to read:

15200.81. (a) For the 1998–99 fiscal year the department shall pay to each county a child support incentive payment. Every county shall receive the federal child support incentive. A county shall receive the state child support incentive if it elects to do both of the following:

(1) Comply with the reporting requirements of Section 11475.8 while federal financial participation is available for collecting and reporting data.

(2) Comply with federal and state child support laws and regulations, or has a corrective action plan certified by the department pursuant to Section 15200.75. The combined federal and state incentive payment shall be 13.6 percent of distributed collections. If the amount appropriated by the Legislature for the state incentives is less than the amount necessary to satisfy each county's actual incentives pursuant to this section, each county shall receive its proportional share of incentives.

(b) (1) Beginning July 1, 1999, the department shall pay to each county a child support incentive for child support collections. Every county shall receive the federal child support incentive. The combined federal and state incentive payments shall be 13.6 percent of distributed collections. In addition to the federal child support incentive, each county may also receive a state child support incentive. Subject to subdivision (c), a county shall receive the state child support incentive if it elects to do both of the following:

(A) Comply with the reporting requirements of Section 11475.8 while federal financial participation is available for collecting and reporting data.

(B) Be in compliance with federal and state child support laws and regulations, or have a corrective action plan certified by the department pursuant to Section 15200.75. If the amount appropriated by the Legislature for the state incentives is less than the amount necessary to satisfy each county's actual incentives pursuant to this section, each county shall receive its proportional share of the incentives.

(2) (A) For purposes of paragraph (1), the federal incentive component shall be each county's share of the child support incentive

payments that the state receives from the federal government, based on the county's collections.

(B) (i) Effective July 1, 1999, and annually thereafter, state funds appropriated for child support incentives shall first be used to fund the administrative costs incurred by local child support agencies in administering the child support program, after subtracting all federal financial participation for administrative costs and all federal child support incentives received by the state and passed on to the local child support agencies. The department shall allocate sufficient resources to each local child support agency to fully fund the remaining administrative costs, subject to approval by the department and the appropriation of funding in the annual Budget Act. No later than January 1, 2000, the department shall identify allowable administrative costs that may be claimed for reimbursement from the state, which shall be limited to reasonable amounts in relation to the scope of services and the total funds available. If the total amount of administrative costs claimed in any year exceeds the amount appropriated in the Budget Act, the amount provided to local child support agencies shall be reduced by the percentage necessary to ensure that projected General Fund expenditures do not exceed the amount authorized in the Budget Act.

(ii) Effective July 1, 2000, and annually thereafter, after allowable administrative costs are funded under clause (i), the department shall use any remaining incentive funds appropriated from the prior fiscal year which are hereby reappropriated to implement an incentive program that rewards up to 10 local child support agencies in each year, based on their proportional level of collections and their increase in performance over the prior year. The proportional collections standard shall be based on each local child support agency's collections relative to the total amount owed in the following categories: (A) collections on behalf of previously aided families that received CalWORKs benefits after December 31, 1997, and are no longer receiving benefits; and (B) collections that are used to reduce or repay aid that is paid pursuant to this division. The performance improvement standard shall measure the percent improvement for each local child support agency in the two categories of collections over the prior year. The department shall determine the number of local agencies that receive state incentive funds under this program, subject to a maximum of five agencies under each standard, and shall determine the amount received by each local agency based on the availability of funds and each local child support agency's proportional share of distributed collections.

(iii) State funds received by any local child support agency pursuant to clauses (i) and (ii) shall be limited to no more than 13 percent of that agency's total distributed collections. Any funds received pursuant to this subdivision shall be used only for child support enforcement activities.

(c) (1) Beginning October 1, 1999, any county whose performance score is in the bottom quartile of all counties and whose rate of improvement over the prior year is less than the statewide average shall receive its state incentive only upon accepting technical assistance from the department, as set forth in paragraph (3).

(2) The welfare performance score for each county is calculated by dividing the county's collections on behalf of children receiving CalWORKs benefits pursuant to Article 6 (commencing with Section 11450) of Chapter 2 in the previous fiscal year by the county's average CalWORKs caseload in the previous fiscal year.

(3) The department, in consultation with experts from other counties, as appropriate, shall conduct a program review of the county's child support program, which shall include a review of the county's management practices, and provide technical assistance. If the county chooses to receive its state incentives under this section, the county shall comply with the recommendations of this review.

(d) Each county shall continue to receive its federal child support incentive funding whether or not it elects to participate in the state child support incentive funding program.

(e) The department shall provide incentive funds pursuant to this section only during any fiscal year in which funding is provided for that purpose in the Budget Act.

SEC. 35. Section 15204.3 of the Welfare and Institutions Code is amended to read:

15204.3. (a) Beginning in the 2000–01 fiscal year, allocation of funds provided under Section 15204.2 shall be made, in the case of funds for benefits administration and employment services, based on projected county costs and subject to funds appropriated in the annual Budget Act for operating the CalWORKs program under Chapter 2 (commencing with Section 11200). By November 1, 1999, the department and the County Welfare Directors Association shall jointly develop the specific components of this budgeting methodology, including a process for ensuring that costs funded under the methodology are reasonable and consistent with the requirements of this chapter.

(b) No later than November 1, 2002, the Welfare Reform Steering Committee shall review the efficacy of the methodology in subdivision (a) and make recommendations, if any, for modification to the methodology.

(c) In the 1997–98 fiscal year, additional funds for welfare-to-work administration above GAIN allocation in the 1996–97 fiscal year shall be distributed among the counties with two-thirds allocated to all counties based on each county's share of adults aided under Chapter 2 (commencing with Section 11200). The remaining one-third shall be allocated among only those counties that in the prior year received an allocation per average aided adult at a level less than the statewide average, and shall be distributed among those counties so that they

each receive the same overall allocation per average aided adult for welfare-to-work administration.

(d) For purposes of this section, and subject to funds appropriated in the annual Budget Act, no county shall receive less for employment services than what was received in the 1997–98 fiscal year allocation for welfare-to-work administration unless a county projects that its cost will be less than its 1997–98 fiscal year allocation for employment services.

SEC. 36. Section 15766 is added to the Welfare and Institutions Code, to read:

15766. The investigation of allegations of elder and dependent adult abuse pursuant to this chapter, and the case management of elder and dependent adult abuse cases shall be performed by county merit systems civil service employees. A county adult protective service agency may utilize a contracted private or nonprofit telephone answering service after normal working hours and on weekends and holidays. Such a contracted telephone service shall immediately forward to a county merit systems civil service employee any report of abuse or neglect of an elder or dependent adult, unless the caller is: (a) requesting routine information only; (b) reporting an incident of abuse which occurred prior to the date of the call, which does not at the time of the call put the victim at risk; or (c) requesting information not related to the adult protective service program, and the person answering the telephone meets the standards established by the department.

SEC. 37. Section 16164 of the Welfare and Institutions Code is amended to read:

16164. (a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) Disseminate information on the rights of children and youth in foster care and the services provided by the office. The information shall include notification that conversations with the office may not be confidential.

(2) Investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services.

(3) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation.

(4) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature of complaints.

(7) Compile and make available to the Legislature all data collected over the course of the year including, but not limited to, the number of contacts to the toll-free telephone number, the number of complaints made, the number of investigations performed by the office, the number of referrals made, and the number of unresolved complaints.

(8) Have access to any record of a state or local agency that is necessary to carry out his or her responsibilities, and may meet or communicate with any foster child in his or her placement or elsewhere.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

SEC. 38. Section 16501.3 is added to the Welfare and Institutions Code, to read:

16501.3. (a) The Department of Social Services shall establish a program of public health nursing in the child welfare services program. The purpose of the public health nursing program shall be to enhance the physical, mental, dental, and developmental well-being of children in the child welfare system.

(b) As a condition of receiving funds under this section, counties shall use the services of a foster care public health nurse. The foster care public health nurse shall work with the appropriate child welfare services workers to coordinate health care services and serve as a liaison with health care professionals and other providers of health-related services. This shall include coordination with county mental health plans and local health jurisdictions, as appropriate.

(c) The duties of a foster care public health nurse may include, but need not be limited to, the following:

(1) Collecting health information and other relevant data on each foster child as available, receiving all collected information to determine appropriate referral and services, and expediting referrals to providers in the community for early intervention services, specialty services, dental care, mental health services, and other health-related services required by the child.

(2) Participating in medical care planning and coordinating for the child. This may include, but is not limited to, assisting case workers in arranging for comprehensive health and mental health assessments, interpreting the results of health assessments or evaluations for the purpose of case planning and coordination, facilitating the acquisition of any necessary court authorizations for procedures or medications, advocating for the health care needs of the child and ensuring the creation of linkage among various providers of care.

(3) Providing follow-up contact to assess the child's progress in meeting treatment goals.

(d) The services provided by foster care public health nurses under this section shall be limited to those for which reimbursement may be claimed under Title XIX at an enhanced rate for services delivered by skilled professional medical personnel. Notwithstanding any other provision of law, this section shall be implemented only if, and to the extent that, the department determines that federal financial participation, as provided under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), is available.

(e) Notwithstanding Section 10101 of the Welfare and Institutions Code, there shall be no required county match of the nonfederal cost of this program.

SEC. 41. Section 18358.30 of the Welfare and Institutions Code is amended to read:

18358.30. (a) Rates for foster family agency programs participating under this chapter shall be exempt from the current AFDC-FC foster family agency ratesetting system.

(b) Rates for foster family agency programs participating under this chapter shall be set according to the appropriate service and rate level based on the level of services provided to the eligible child and the certified foster family. For an eligible child placed from a group home program, the service and rate level shall not exceed the rate paid for group home placement. For an eligible child assessed by the county interagency review team as at imminent risk of group home placement or psychiatric hospitalization, the appropriate service and rate level for the child shall be determined by the interagency review team at time of placement. In all of the service and rate levels, the foster family agency programs shall:

(1) Provide social work services with average caseloads not to exceed eight children per worker, except that social worker average caseloads for children in Service and Rate Level E shall not exceed 12 children per worker.

(2) Pay an amount of one thousand two hundred dollars ($1,200) per child per month to the certified foster parent or parents.

(3) Perform activities necessary for the administration of the programs, including, but not limited to, training, recruitment, certification, and monitoring of the certified foster parents.

(4) (A) (i) Provide a minimum average range of service per month for children in each service and rate level in a participating foster family agency, represented by paid employee hours incurred by the participating foster family agency, by the in-home support counselor to the eligible child and the certified foster parents depending on the needs of the child and according to the following schedule:

Service and Rate Level	In−Home Support Counselor Hours Per Month
A	98−114 hours
B	81−97 hours
C	64−80 hours
D	47−63 hours

(ii) Children placed at Service and Rate Level E shall receive crisis intervention and other support services on a flexible, as needed, basis from an in-home support counselor. The foster family agency shall provide one full-time in-home support counselor for every 20 children placed at this level.

(B) When the interagency review team and the foster family agency agree that alternative services are in the best interests of the child, the foster family agency may provide the following types of services in lieu of in-home support services required by subparagraph (A):

(i) Therapy.

(ii) Behavior modification services.

(iii) Support counselor services.

(iv) Psychotropic medication and monitoring.

(v) Respite services.

(vi) Family therapy to aid in family reunification.

(vii) Education liaison services to maintain the child in the classroom.

(c) The department or placing county, or both, may review the level of services provided by the foster family agency program. If the level of services actually provided are less than those required by subdivision (b) for the child's service and rate level, the rate shall be adjusted to reflect the level of service actually provided, and an overpayment may be established and recovered by the department.

(d) (1) On and after July 1, 1998, the standard rate schedule of service and rate levels shall be:

Service and Rate Level	Fiscal Year 1998-99 Standard Rate
A	$3,957
B	$3,628
C	$3,290
D	$2,970
E	$2,639

(2) (A) On and after July 1, 1999, the standardized schedule of rates shall be adjusted by an amount equal to the California

Necessities Index computed pursuant to Section 11453, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized rate schedule, subject to further adjustment pursuant to subparagraph (B), for foster family agency programs participating under this chapter.

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized schedule of rates shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized rate schedule for foster family agency programs participating under this chapter.

(3) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the California Necessities Index computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts, rounded to the nearest dollar, shall constitute the new standard rate schedule for foster family agency programs participating under this chapter.

(e) Rates for foster family agency programs participating under this chapter shall not exceed Service and Rate Level A at any time during an eligible child's placement. An eligible child may be initially placed in a participating intensive foster care program at any one of the five Service and Rate Levels A to E, inclusive, and thereafter placed at any level, either higher or lower, not to exceed a total of six months at any level other than Service and Rate Level E, unless it is determined to be in the best interests of the child by the child's county interagency review team and the child's certified foster parents. The child's interagency county interagency placement review team may, through a formal review of the child's placement, extend the placement of an eligible child in a service and rate level higher than Service and Rate Level E for additional periods of up to six months each.

(f) It is the intent of the Legislature that the rate paid to participating foster family agency programs shall decrease as the child's need for services from the foster family agency decreases. The foster family agency shall notify the placing county and the department of the reduced services and the pilot classification model, and the rate shall be reduced accordingly.

(g) It is the intent of the Legislature to prohibit any duplication of public funding. Therefore, social worker services, payments to certified foster parents, administrative activities, and the services of in-home support counselors that are funded by another public source shall not be counted in determining whether the foster family agency program has met its obligations to provide the items listed in paragraphs (1), (2), (3), and (4) of subdivision (b). The department shall work with other potentially affected state departments to ensure that duplication of payment or services does not occur.

SEC. 41.5. Section 18930 of the Welfare and Institutions Code, as added by Section 34 of Chapter 329 of the Statutes of 1998, is amended to read:

18930. (a) The State Department of Social Services shall establish a Food Assistance Program to provide assistance for those persons described in subdivision (b). The department shall enter into an agreement with the United States Department of Agriculture to use the existing federal Food Stamp Program coupons for the purposes of administering this program. Persons who are members of a household receiving food stamp benefits under this chapter or under Chapter 10 (commencing with Section 18900), and are receiving CalWORKs benefits under Chapter 2 (commencing with Section 11200) of Part 3 on September 1, 1998, shall have eligibility determined under this chapter without need for a new application no later than November 1, 1998, and the beginning date of assistance under this chapter for those persons shall be September 1, 1998.

(b) (1) Except as provided in paragraphs (2), (3), and (4) and Section 18930.5, noncitizens of the United States shall be eligible for the program established pursuant to subdivision (a) if the person's immigration status meets the eligibility criteria of the federal Food Stamp Program in effect on August 21, 1996, but he or she is not eligible for federal food stamp benefits solely due to his or her immigration status under Public Law 104-193 and any subsequent amendments thereto.

(2) Noncitizens of the United States shall be eligible for the program established pursuant to subdivision (a) if the person is a battered immigrant spouse or child or the parent or child of the battered immigrant, as described in Section 1641(c) of Title 8 of the United States Code, as amended by Section 5571 of Public Law 105-33, or if the person is a Cuban or Haitian entrant as described in Section 501(e) of the federal Refugee Education Assistance Act of 1980 (Public Law 96-122).

(3) An applicant who is otherwise eligible for the program but who entered the United States on or after August 22, 1996, shall be eligible for aid under this chapter only if he or she is sponsored and one of the following apply:

(A) The sponsor has died.

(B) The sponsor is disabled as defined in subparagraph (A) of paragraph (3) of subdivision (b) of Section 11320.3.

(C) The applicant, after entry into the United States, is a victim of abuse by the sponsor or the spouse of the sponsor if the spouse is living with the sponsor.

(4) An applicant who is otherwise eligible for the program but who entered the United States on or after August 22, 1996, who does not meet one of the conditions of paragraph (3), shall be eligible for aid under this chapter for the period beginning on October 1, 1999, and ending September 30, 2000.

(5) The applicant shall be required to provide verification that one of the conditions of subparagraph (A), (B), or (C) have been met.

(6) For purposes of subparagraph (C) of paragraph (2), abuse shall be defined in the same manner as provided in Section 11495.1 and Section 11495.12. A sworn statement of abuse by a victim, or the representative of the victim if the victim is not able to competently swear, shall be sufficient to establish abuse if one or more additional items of evidence of abuse is also provided. Additional evidence may include, but is not limited to, the following:

(A) Police, government agency, or court records or files.

(B) Documentation from a domestic violence program, legal, clinical, medical, or other professional from whom the applicant or recipient has sought assistance in dealing with abuse.

(C) A statement from any other individual with knowledge of the circumstances that provided the basis for the claim.

(D) Physical evidence of abuse.

(7) If the victim cannot provide additional evidence of abuse, then the sworn statement shall be sufficient if the county makes a determination documented in writing in the case file that the applicant is credible.

(c) In counties approved for alternate benefit issuance systems, that same alternate benefit issuance system shall be approved for the program established by this chapter.

(d) (1) To the extent allowed by federal law, the income, resources, and deductible expenses of those persons described in subdivision (b) shall be excluded when calculating food stamp benefits under Chapter 10 (commencing with Section 18900).

(2) No household shall receive more food stamp benefits under this section than it would if no household member was rendered ineligible pursuant to Title IV of Public Law 104-193 and any subsequent amendments thereto.

(e) This section shall become operative on September 1, 1998.

SEC. 41.6. Section 18930.5 of the Welfare and Institutions Code is amended to read:

18930.5. (a) As a condition of eligibility for assistance under this chapter:

(1) A recipient who is also receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 shall be required to satisfactorily participate in welfare-to-work activities in accordance with the recipient's welfare-to-work plan developed pursuant to Section 11325.21.

(2) A recipient who is not receiving aid under Chapter 2 shall be required to meet the federal Food Stamp Program work requirement specified in Section 6(o) of the Food Stamp Act of 1977 and any subsequent amendments thereto.

(b) This section shall become operative on September 1, 1998.

SEC. 42. Section 18932 of the Welfare and Institutions Code is amended to read:

18932. (a) Except as otherwise provided in this chapter, the federal and state laws and regulations governing the federal Food Stamp Program shall also govern the program provided for under this chapter.

(b) Federal deeming rules and exemptions governing the federal Food Stamp Program shall also govern the program provided for under this chapter, except that for immigrants with affidavits of support under Section 1183a of Title 8 of the United States Code who do not meet exemptions from deeming, the period for deeming of a sponsor's income and resources shall be three years from the date of the sponsor's execution of the affidavit of support pursuant to Section 1183a of Title 8 of the United States Code.

(c) Notwithstanding any other provision in this chapter, immigrants who are victims of abuse by their sponsor or sponsor's spouse shall be exempt from deeming. Abuse shall be defined in the same manner as provided in Section 11495.1 and Section 11495.12. A sworn statement of abuse by a victim, or the representative of the victim if the victim is not able to competently swear, shall be sufficient to establish abuse if one or more additional items of evidence of abuse is also provided. Additional evidence may include, but is not limited to, the following:

(1) Police, government agency, or court records or files.

(2) Documentation from a domestic violence program, or from a legal, clinical, medical, or other professional from whom the applicant or recipient has sought assistance in dealing with abuse.

(3) A statement from any other individual with knowledge of the circumstances that provided the basis for the claim.

(4) Physical evidence of abuse.

(5) If the victim cannot provide additional evidence of abuse, then the sworn statement shall be sufficient if the county makes a determination documented in writing in the case file that the applicant is credible.

SEC. 42.5. Section 18934 of the Welfare and Institutions Code is amended to read:

18934. (a) It is the intent of the Legislature to appropriate funds in the Budget Act for the purpose of providing services under this chapter.

SEC. 42.6. Section 18935 is added to the Welfare and Institutions Code, to read:

18935. This chapter shall be implemented only during any period that federal benefits are provided under Section 1612(a) of Title 8 of the United States Code.

SEC. 42.7. Section 18938 of the Welfare and Institutions Code is amended to read:

18938. (a) (1) Subject to paragraphs (2) and (3), an individual, upon application, shall be eligible for the program established

pursuant to Section 18937 if his or her immigration status meets the eligibility criteria of the Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled (SSI/SSP) in effect on August 21, 1996, but he or she is not eligible for SSI/SSP benefits solely due to his or her immigration status under Title IV of Public Law 104-193 and any subsequent amendments thereto.

(2) An applicant who is otherwise eligible for the program, but who entered the United States on or after August 22, 1996, shall be eligible for aid under this chapter only if he or she is sponsored and one of the following conditions is met:

(A) The sponsor has died.

(B) The sponsor is disabled, as defined in subparagraph (A) of paragraph (3) of subdivision (b) of Section 11320.3.

(C) The applicant, after entry into the United States, is a victim of abuse by the sponsor or the spouse of the sponsor if the spouse is living with the sponsor.

(3) An applicant who is otherwise eligible for the program but who entered the United States on or after August 22, 1996, and who does not meet one of the conditions of paragraph (2) shall be eligible for aid under this chapter for the period beginning on October 1, 1999, and ending on September 30, 2000.

(4) The applicant shall be required to provide verification that one of the conditions of subparagraphs (A), (B), or (C) of paragraph (2) has been met.

(5) (A) For purposes of subparagraph (C) of paragraph (2), abuse shall be defined in the same manner as provided in Section 11495.1 and Section 11495.12. A sworn statement of abuse by a victim, or the representative of the victim if the victim is not able to competently swear, shall be sufficient to establish abuse if one or more additional items of evidence of abuse is also provided. Additional evidence may include, but is not limited to, the following:

(i) Police, government agency, or court records or files.

(ii) Documentation from a domestic violence program, legal, clinical, medical, or other professional from whom the applicant or recipient has sought assistance in dealing with abuse.

(iii) A statement from any other individual with knowledge of the circumstances that provided the basis for the claim.

(iv) Physical evidence of abuse.

(B) If the victim cannot provide additional evidence of abuse, then the sworn statement shall be sufficient if the county makes a determination documented in the case file that the applicant is credible.

(b) The department shall periodically redetermine the eligibility of each individual.

(c) The department shall take all steps necessary to qualify any benefits paid under this section to be eligible for reimbursement as

federal Interim Assistance including requiring a repayment agreement.

SEC. 43. Section 18940 of the Welfare and Institutions Code is amended to read:

18940. (a) Except as otherwise provided in this chapter, the federal and state laws and regulations governing the SSI/SSP program shall also govern the program provided for under this chapter.

(b) Federal deeming rules and exemptions governing the SSI/SSP program, including all federal and state laws and regulations designed to protect SSI/SSP recipients and their resources, shall also govern the program provided for under this chapter, except that for immigrants with affidavits of support under Section 1183a of Title 8 of the United States Code who do not meet exemptions from deeming, the period for deeming of a sponsor's income and resources shall be five years from the date of the sponsor's execution of the affidavit of support pursuant to Section 1183a of Title 8 of the United States Code.

(c) Notwithstanding any other provision in this chapter, immigrants who are victims of abuse by their sponsor or sponsor's spouse shall be exempt from deeming. Abuse shall be defined in the same manner as provided in Section 11495.1 and Section 11495.12. A sworn statement of abuse by a victim, or the representative of the victim if the victim is not able to competently swear, shall be sufficient to establish abuse if one or more additional items of evidence of abuse is also provided. Additional evidence may include, but is not limited to, the following:

(1) Police, government agency, or court records or files.

(2) Documentation from a domestic violence program, or from a legal, clinical, medical, or other professional from whom the applicant or recipient has sought assistance in dealing with abuse.

(3) A statement from any other individual with knowledge of the circumstances that provided the basis for the claim.

(4) Physical evidence of abuse.

(5) If the victim cannot provide additional evidence of abuse, then the sworn statement shall be sufficient if the county makes a determination documented in writing in the case file that the applicant is credible.

SEC. 43.5. Section 18944 of the Welfare and Institutions Code is amended to read:

18944. (a) It is the intent of the Legislature to appropriate funds in the Budget Act for the purpose of providing services under this chapter.

(b) This chapter shall become operative on:

(1) October 1, 1998, for those individuals who are eligible for aid under this chapter and are discontinued from the SSI/SSP program effective with their September 1998 benefits as a result of their immigration status under Title IV of Public Law 104-193 and any

subsequent amendments thereto. Until the counties begin full operation the department shall cause a payment to each individual or couple to be issued through the Controller so that there is no interruption in these individual's receipt of aid to which they are eligible under this chapter.

(2) November 1, 1998, for applicants for this program to have their applications accepted by county welfare departments, and establish a beginning date of aid. Counties shall have the ability to make eligibility determinations and cause the issuance of payments no later than December 1, 1998, unless the federal government has agreed to provide the services under this chapter at an earlier date.

(c) This chapter shall be implemented only during any period that federal benefits are provided under Section 1612(a) of Title 8 of the United States Code.

SEC. 44. Section 19091 of the Welfare and Institutions Code is amended to read:

19091. (a) Pursuant to federal law, there is a State Independent Living Council, that shall advise and assist the director in carrying out the independent living provisions of this division and federal law.

(b) The membership of the council shall be appointed by the Governor and shall be composed of the representatives specified in Section 796d of Title 29 of the United States Code.

SEC. 45. Section 19092 of the Welfare and Institutions Code is amended to read:

19092. (a) The functions of the State Rehabilitation Advisory Council and the State Independent Living Council and terms of appointment of the members thereof shall be governed by Chapter 16 (commencing with Section 701) of Title 29 of the United States Code.

(b) Members of the councils described in subdivision (a) shall be reimbursed for the actual costs of reasonable and necessary expenses, including child care and personal assistance services, incurred when attending council meetings and or performing council duties. In addition, any member who is unemployed or who is required to forfeit wages from other employment shall be compensated one hundred dollars ($100) per day for each day the member is engaged in attending council meetings and or performing duties of the council.

(c) The director, in consultation with the councils, shall provide necessary staff support and assistance for the respective councils to carry out their functions.

SEC. 46. Section 19355.5 of the Welfare and Institutions Code is amended to read:

19355.5. Notwithstanding any other provision of law, effective July 1, 1999, the twenty-seven dollar and fifty cent ($27.50) hourly rate for supported employment services established for the 1999–2000 fiscal year pursuant to paragraph (2) of subdivision (b) of Section 19356.6 shall be reduced by the percentage necessary to

ensure that projected total General Fund expenditures and reimbursements for habilitation services and vocational rehabilitation supported employment services, including services pursuant to paragraph (2) of, and clauses (i) to (iii), inclusive, of subparagraph (B) of paragraph (2) of, subdivision (b) of Section 19356.6, and, for the habilitation services program only, ancillary services, based on Budget Act caseload projections, do not exceed the General Fund and reimbursement appropriations for these services in the Budget Act of 1999.

SEC. 47. Section 19356.6 of the Welfare and Institutions Code is amended to read:

19356.6. (a) The definitions contained in this subdivision shall govern the construction of this section, with respect to services provided through the Habilitation Services Program, and unless the context requires otherwise, the following terms shall have the following meanings:

(1) "Supported employment" means paid work that is integrated in the community for individuals with developmental disabilities whose vocational disability is so severe that they would be unable to achieve this employment without specialized services and would not be able to retain this employment without an appropriate level of ongoing postemployment support services.

(2) "Integrated work" means the engagement of an employee with a disability in work in a 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, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 48. Section 19356.7 of the Welfare and Institutions Code is amended to read:

19356.7. (a) Proposals for funding of new, and modifications to existing, supported employment programs and components by the Habilitation Services Program shall be submitted to the Habilitation Services Program and shall contain sufficient information to enable the Habilitation Services Program to act on the proposal under this section.

(b) Provided that sufficient funding is available to finance services by supported employment programs and components, the Habilitation Services Program may approve or disapprove proposals based on all of the following criteria:

(1) The need for a supported employment program or component.

(2) The capacity of the program to deliver supported employment services effectively.

(3) The ability of the program to comply with accreditation requirements of the Habilitation Services Program. The accreditation standards adopted by the department shall be the

standards developed by the Commission of Rehabilitation Facilities and published in the most current edition of the Standards Manual for Organizations Serving People with Disabilities, as well as any subsequent amendments to the manual.

(4) A profile of an average consumer in the program or component, showing the planned progress toward self-reliance as an employee, measured, as appropriate, in terms of decreasing support services.

(5) The ability of the program to achieve integrated paid work on the average for consumers served.

(c) The Habilitation Services Program may purchase supported employment services at the rates authorized in Section 19356.6 only from supported employment programs or components approved under this section.

(d) For purposes of evaluating the effectiveness of the entire program, and individual supported employment programs or components, the Habilitation Services Program may monitor supported employment programs or components to determine whether the performance agreed upon in the approved proposal is being achieved. When the performance of a supported employment program or component does not comply with the criteria according to which it was approved for funding pursuant to subdivision (b), the Habilitation Services Program may establish prospective performance criteria for the program or component, with which the program or component shall comply as a condition of continued funding.

(e) The department shall adopt regulations to implement the requirements of Sections 19352, 19356.6, and this section, in consultation with the California Rehabilitation Association, the United Cerebral Palsy Association, and the Association of Retarded Citizens of California.

(f) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 49. Section 19806 of the Welfare and Institutions Code is amended to read:

19806. (a) An independent living center shall not be required to provide any matching funds through private contributions as a condition of receiving state funds except to acquire state incentive funds.

(b) Each independent living center, except those centers which have been both established and maintained using federal funding under Title VII(c) of the federal Rehabilitation Act of 1973 as amended as their primary base grant, as determined by the department, shall receive to the extent funds are appropriated by the Legislature, at least two hundred thirty-five thousand dollars ($235,000) in base grant funds allocated by the department. The

department shall allocate to those centers with Title VII(c) base grant funds of less than two hundred thirty-five thousand dollars ($235,000) an amount that, when combined with the Title VII(c) grant, equals two hundred thirty-five thousand dollars ($235,000).

(c) State funds may be replaced by reimbursements under the Supplemental Security Disability Insurance and the Supplemental Security Income programs provided for under Titles II and XVII of the Federal Social Security Act, Subchapter II (commencing with Section 401) and Subchapter XVII (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code to the extent appropriated by the Legislature and allocated by the department to independent living centers under this chapter. Beginning with the 1998–99 fiscal year, and each year thereafter, to the extent these funds from the Social Security Act are not appropriated by the Legislature as were appropriated in the 1997–98 fiscal year, an amount equal to the combined state and federal fund allocation to independent living centers in the Budget Act of 1997 shall be appropriated to, and allocated by, the department to independent living centers under this chapter.

(d) (1) Available state incentive funds shall be allocated at the beginning of each fiscal year based upon the average amount of private contributions received by the independent living center in the second and third preceding fiscal years.

(2) The maximum amount of incentive funds that may be allocated to any independent living center in any single fiscal year shall be computed as follows:

(A) "Pool One" is defined as 60 percent of all state incentive funds. "Pool Two" is defined as 40 percent of all state incentive funds. Each independent living center shall be entitled to an equal portion of Pool One, not to exceed the amounts raised pursuant to paragraph (1).

(B) Incentive funds from Pool One not used after the initial allocation pursuant to subparagraph (A) shall be added to Pool Two for allocation among all centers that had unmatched private contributions after distribution of Pool One funds. Pool Two funds shall be awarded in direct proportion to each center's percentage of the total remaining unmatched private contributions raised by those independent living centers.

(3) For the purpose of determining eligibility for state incentive funds, any independent living center that uses a fiscal year other than the state fiscal year may elect to use a different fiscal year so long as the closing date of the fiscal year so elected does not precede the closing date of the equivalent state fiscal year by more than 11 months.

(4) The amount of private contributions claimed by an independent living center for each fiscal year shall be verified by the department by utilizing appropriate financial records including, but not limited to, independent audits. Audits may be performed by the department up to three years from the close of the fiscal year during

which state incentive funds were received by the independent living center being audited.

(5) State incentive funds that are not distributed to independent living centers shall not be allocated or retained by the department for distribution as state incentive funds in later fiscal years.

(e) For purposes of this section:

(1) "Private funds" does not include any funds originating from any entity of the federal, state, city, or county government or any political subdivision thereof. Notwithstanding the provisions of this section, fees from any source for services provided may be included as private contributions by an independent living center for purposes of determining its allocation of incentive funds.

(2) "State incentive funds" means state funds appropriated by the Legislature for purposes of this chapter, except those funds allocated by the department pursuant to subdivisions (b) and (g) of this section.

(f) Any funds allocated under this chapter to any independent living center, other than as part of the initial allocation for each fiscal year, shall be made by contract amendment. Any contract amendment shall require the provision of services in addition to those required by the contract being amended. All those services required by contract amendment shall not be performed prior to the date the contract amendment is approved by the state.

(g) To the extent funds are appropriated by the Legislature, after allocation of base grant and incentive funds, remaining funds shall be allocated by the department among independent living centers on the basis of the ratio of the total of the general population in an independent living center's geographic service areas as compared to the total of the general population in all independent living centers geographic services area statewide. The department shall adopt regulations for the distribution of population funds by June 30, 1999.

SEC. 50. It is the intent of the Legislature that a portion of the funds available for the competitive bid allocations to local entities under the welfare-to-work program shall be used to remove barriers to local program implementation. Specifically, these funds shall be used for state-approved local training to build staff capacity to work effectively with the very hard to serve welfare-to-work population eligible for welfare-to-work activities authorized under Section 603(a)(5) of Title 5 of the United States Code that face multiple barriers to employment, as described in Section 2864(d)(4)(G)(iv) of Title 29 of the United States Code, and to expand the employment training network which provides technical assistance and capacity building resources to state and local welfare-to-work partners.

SEC. 52. (a) The California Department of Aging shall utilize funds appropriated through the Budget Act of 1999 for expansion of the Multipurpose Senior Services Program (MSSP) to fund additional slots in underserved planning and service areas (PSAs) in which the ratio of existing MSSP slots to estimated clients' needs is

below the statewide average before funding slots in any PSA in which the ratio of existing MSSP slots to clients' needs is above the statewide average.

(b) Area agencies on aging shall maintain contracts funded from appropriations made by the Budget Act of 1999 for community-based service program expansion until July 1, 2003.

SEC. 53. Nothing shall preclude appropriations from the General Fund to support the Health Insurance Counseling and Advocacy Program in the Department of Aging (Section 9541 of the Welfare and Institutions Code).

SEC. 54. Notwithstanding the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), through June 30, 2000, the State Department of Social Services may implement Sections 41.5 to 43.5, inclusive, of this act through all county letters or similar instructions from the director.

(b) The director shall adopt regulations, as otherwise necessary, to implement the applicable provisions of Chapter 10.1 (commencing with Section 18930) and Chapter 10.3 (commencing with Section 18937) of Part 6 of Division 9 of the Welfare and Institutions Code no later than July 1, 2000. The director may adopt emergency regulations to implement those provisions of law in accordance with the Administrative Procedure Act. The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(c) Emergency regulations adopted pursuant to this section shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days.

SEC. 55. 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.

SEC. 55. 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 make timely adjustments in the process of implementation of the State Budget for the 1999–2000 fiscal year, it is necessary that this act take effect immediately.

———

CHAPTER 148

An act to amend Sections 14005.30 and 18940 of, to amend and repeal Section 14053.1 of, and to repeal and add Section 14007.65 of, the Welfare and Institutions Code, relating to human services, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 14005.30 of the Welfare and Institutions Code, as amended by Assembly Bill 1107 of the 1999–2000 Regular Session, is amended to read:

14005.30. (a) (1) To the extent that federal financial participation is available, Medi-Cal benefits under this chapter shall be provided to individuals eligible for services under Section 1396u-1 of Title 42 of the United States Code, including any options under Section 1396u-1(b)(2)(C) made available to and exercised by the state.

(2) The department shall exercise its option under Section 1396u-1(b)(2)(C) of Title 42 of the United States Code to adopt less restrictive income and resource eligibility standards and methodologies to the extent necessary to allow all recipients of benefits under Chapter 2 (commencing with Section 11200) to be eligible for Medi-Cal under paragraph (1).

(b) To the extent that federal financial participation is available, the department shall exercise its option under Section 1396u-1(b)(2)(C) of Title 42 of the United States Code as necessary to expand eligibility for Medi-Cal under subdivision (a) by establishing the amount of countable resources individuals or families are allowed to retain at the same amount medically needy individuals and families are allowed to retain, except that a family of one shall be allowed to retain countable resources in the amount of three thousand dollars ($3,000).

(c) To the extent federal financial participation is available, the department shall, commencing March 1, 2000, adopt an income disregard for applicants equal to the difference between the income standard under the program adopted pursuant to Section 1931(b) of the federal Social Security Act (42 U.S.C. Sec. 1396u-1) and the amount equal to 100 percent of the federal poverty level applicable to the size of the family. A recipient shall be entitled to the same disregard, but only to the extent it is more beneficial than, and is substituted for, the earned income disregard available to recipients.

(d) Subdivision (b) shall be applied retroactively to January 1, 1998.

(e) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement, without taking regulatory action, subdivisions (a) and (b) of this section by means of an all county letter or similar instruction. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Beginning six months after the effective date of this section, the department shall provide a status report to the Legislature on a semiannual basis until regulations have been adopted.

SEC. 2. Section 14053.1 of the Welfare and Institutions Code, as added by Assembly Bill 1107 of the 1999–2000 Regular Session, is amended to read:

14053.1. (a) Notwithstanding Section 14053, ancillary outpatient services, pursuant to Section 14132, for any eligible individual who is 21 years of age or over, and has not attained 65 years of age and who is a patient in an institution for mental diseases shall be covered regardless of the availability of federal financial participation.

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

SEC. 3. Section 14007.65 of the Welfare and Institutions Code, as added by Assembly Bill 1107 of the 1999-2000 Regular Session, is repealed.

SEC. 4. Section 14007.65 is added to the Welfare and Institutions Code, to read:

14007.65. (a) Aliens who were receiving long-term care services under the authority of subdivision (f) of Section 1 of Chapter 1441 of the Statutes of 1988 on the day prior to the effective date of this section shall continue to receive those long-term care services.

(b) On or after the effective date of this section, any alien applicant who is not lawfully present in the United States, who is otherwise eligible for Medi-Cal services, but who does not meet the requirements under subdivision (b) or (c) of Section 14007.5, would be eligible to receive federally reimbursable long-term care services pursuant to the medicaid program provided for pursuant to Title 19 of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), shall be eligible to receive long-term care services to the extent that funding is made available for this purpose in the annual Budget Act. In no event shall expenditures for this program exceed the amount necessary to serve 110 percent of the 1999–2000 estimated eligible population without further authorization by the Legislature.

SEC. 5. Section 18940 of the Welfare and Institutions Code, as amended by Assembly Bill 1111 of the 1999–2000 Regular Session, is amended to read:

18940. (a) Except as otherwise provided in this chapter, the federal and state laws and regulations governing the SSI/SSP

program shall also govern the program provided for under this chapter.

(b) Federal deeming rules and exemptions governing the SSI/SSP program, including all federal and state laws and regulations designed to protect SSI/SSP recipients and their resources, shall also govern the program provided for under this chapter, except that for immigrants described in paragraph (3) of subdivision (a) of Section 18938 who do not meet exemptions from deeming, the period for deeming of a sponsor's income and resources shall be five years from the date of the sponsor's execution of the affidavit of support or the date of the immigrant's arrival in the United States, whichever is later.

(c) Notwithstanding any other provision in this chapter, immigrants who are victims of abuse by their sponsor or sponsor's spouse shall be exempt from deeming. Abuse shall be defined in the same manner as provided in Section 11495.1 and Section 11495.12. A sworn statement of abuse by a victim, or the representative of the victim if the victim is not able to competently swear, shall be sufficient to establish abuse if one or more additional items of evidence of abuse is also provided. Additional evidence may include, but is not limited to, the following:

(1) Police, government agency, or court records or files.

(2) Documentation from a domestic violence program, or from a legal, clinical, medical, or other professional from whom the applicant or recipient has sought assistance in dealing with abuse.

(3) A statement from any other individual with knowledge of the circumstances that provided the basis for the claim.

(4) Physical evidence of abuse.

(5) If the victim cannot provide additional evidence of abuse, then the sworn statement shall be sufficient if the county makes a determination documented in writing in the case file that the applicant is credible.

SEC. 6. There is hereby appropriated to the State Department of Health Services, in augmentation of Item 4260-001-0001 of the Budget Act of 1999, for increased Medi-Cal provider fraud prevention activities, the sum of six hundred thousand dollars ($600,000) from the General Fund and six hundred thousand dollars ($600,000) from the Federal Trust Fund.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the administration of this act relating to human services for the entire 1999–2000 fiscal year, it is necessary that this act go into immediate effect.

———

CHAPTER 149

An act to amend Section 2815.1 of the Business and Professions Code, and to amend Sections 128230, 128280, 128330, 128335, 128345, 128350, 128355, 128375, 128385, 128395, 128400, 128435, 128445, and 128450 of, to amend the heading of Article 1 (commencing with Section 128330) of Chapter 5 of, to amend the heading of Chapter 5 (commencing with Section 128330) of, Part 5 of Division 107 of, and to repeal Sections 128405 and 128455 of, the Health and Safety Code, relating to nursing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 2815.1 of the Business and Professions Code is amended to read:

2815.1. As provided in subdivision (d) of Section 2815, the Board of Registered Nursing shall collect an additional five dollar ($5) assessment at the time of the biennial licensure renewal. This amount shall be credited to the Registered Nurse Education Fund. This assessment is separate from those fees prescribed in Section 2815.

SEC. 2. Section 128230 of the Health and Safety Code is amended to read:

128230. When making recommendations to the Director of the Office of Statewide Health Planning and Development concerning the funding of family practice programs or departments, family practice residencies, and programs for the training of primary care physician assistants and primary care nurse practitioners, the commission shall give priority to programs that have demonstrated success in the following areas:

(a) Actual placement of individuals in medically underserved areas.

(b) Success in attracting and admitting members of minority groups to the program.

(c) Success in attracting and admitting individuals who were former residents of medically underserved areas.

(d) Location of the program in a medically underserved area.

(e) The degree to which the program has agreed to accept individuals with an obligation to repay loans awarded pursuant to the Health Professions Education Fund.

SEC. 3. Section 128280 of the Health and Safety Code is amended to read:

128280. Each publicly funded medical school in California shall inform incoming medical students of all student loan, loan repayment, and medical student scholarship programs available to

them. This information shall include, but need not be limited to, information concerning the National Health Service Corps program, the Health Professions Education Foundation Program, and the Loan Assumption Program created pursuant to this article.

SEC. 4. The heading of Chapter 5 (commencing with Section 128330) of Division 107 of the Health and Safety Code is amended to read:

CHAPTER 5. HEALTH PROFESSIONS EDUCATION FOUNDATION PROGRAMS

SEC. 5. The heading of Article 1 (commencing with Section 128330) of Chapter 5 of Division 107 of the Health and Safety Code is amended to read:

Article 1. Health Professions Education Foundation

SEC. 6. Section 128330 of the Health and Safety Code is amended to read:

128330. As used in this article:

(a) "Board" means the Board of Trustees of the Health Professions Education Foundation.

(b) "Commission" means the Health Manpower Policy Commission.

(c) "Director" means the Director of the Office of Statewide Health Planning and Development.

(d) "Foundation" means the Health Professions Education Foundation.

(e) "Health professions" or "health professionals" means physicians and surgeons licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, dentists, registered nurses, and other health professionals determined by the office to be needed in medically underserved areas.

(f) "Office" means the Office of Statewide Health Planning and Development.

(g) "Underrepresented groups" means African-Americans, American Indians, Hispanic-Americans, or other persons underrepresented in medicine, dentistry, nursing, or other health professions as determined by the board. After January 1, 1990, the board, upon a finding that the action is necessary to meet the health care needs of medically underserved areas, may add a group comprising the economically disadvantaged to those groups authorized to receive assistance under this article.

SEC. 7. Section 128335 of the Health and Safety Code is amended to read:

128335. (a) The office shall establish a nonprofit public benefit corporation, to be known as the Health Professions Education

Foundation, that shall be governed by a board consisting of nine members appointed by the Governor, one member appointed by the Speaker of the Assembly, and one member appointed by the Senate Committee on Rules. The members of the foundation board appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules may include representatives of minority groups which are underrepresented in the health professions, persons employed as health professionals, and other appropriate members of health or related professions. All persons considered for appointment shall have an interest in health programs, an interest in health educational opportunities for underrepresented groups, and the ability and desire to solicit funds for the purposes of this article as determined by the appointing power. The chairperson of the commission shall also be a nonvoting, ex officio member of the board.

(b) The Governor shall appoint the president of the board of trustees from among those members appointed by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules.

(c) The director, after consultation with the president of the board, may appoint a council of advisers comprised of up to nine members. The council shall advise the director and the board on technical matters and programmatic issues related to the Health Professions Education Foundation Program.

(d) Members of the board and members of the council shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the board or the council.

(e) The foundation shall be subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), except that if there is a conflict with this article and the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), this article shall prevail.

SEC. 8. Section 128345 of the Health and Safety Code is amended to read:

128345. The Health Professions Education Foundation may do any of the following:

(a) Solicit and receive funds from business, industry, foundations, and other private or public sources for the purpose of providing financial assistance in the form of scholarships or loans to African-American students, American Indian students, Hispanic-American students, and other students from underrepresented groups. These funds shall be expended by the office after transfer to the Health Professions Education Fund, created pursuant to Section 128355.

(b) Recommend to the director the disbursement of private sector moneys deposited in the Health Professions Education Fund to students from underrepresented groups accepted to or enrolled in

schools of medicine, dentistry, nursing, or other health professions in the form of loans or scholarships.

(c) Recommend to the director a standard contractual agreement to be signed by the director and any participating student, that would require a period of obligated professional service in the areas in California designated by the commission as deficient in primary care services. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(d) Develop criteria for evaluating the likelihood that applicants for scholarships or loans would remain to practice their profession in designated areas deficient in primary care services.

(e) Develop application forms, that shall be disseminated to students from underrepresented groups interested in applying for scholarships or loans.

(f) Encourage private sector institutions, including hospitals, community clinics, and other health agencies to identify and provide educational experiences to students from underrepresented groups who are potential applicants to schools of medicine, dentistry, nursing, or other health professions.

(g) Prepare and submit an annual report to the office documenting the amount of money solicited from the private sector, the number of scholarships and loans awarded, the enrollment levels of students from underrepresented groups in schools of medicine, dentistry, nursing, and other health professions, and the projected need for scholarships and loans in the future.

(h) Recommend to the director that a portion of the funds solicited from the private sector be used for the administrative requirements of the foundation.

SEC. 9. Section 128350 of the Health and Safety Code is amended to read:

128350. The office shall do all of the following:

(a) Provide technical and staff support to the foundation in meeting all of its responsibilities.

(b) Provide financial management for the Health Professions Education Fund.

(c) Enter into contractual agreements with students from underrepresented groups for the disbursement of scholarships or loans in return for the commitment of these students to practice their profession in an area in California designated as deficient in primary care services.

(d) Disseminate information regarding the areas in the state that are deficient in primary care services to potential applicants for the scholarships or loans.

(e) Monitor the practice locations of the recipients of the scholarships or loans.

(f) Recover funds, in accordance with the terms of the contractual agreements, from recipients of scholarships or loans who fail to begin

or complete their obligated service. Funds so recovered shall be redeposited in the Health Professions Education Fund.

(g) Contract with the institutions that train family practice residents, in order to increase the participation of students from underrepresented groups in entering the specialty of family practice. The director may seek the recommendations of the commission or foundation as to what programs best demonstrate the ability to meet this objective.

(h) Contract with training institutions that are involved in osteopathic postgraduate training in general or family practice medicine, in order to increase the participation of students from underrepresented groups participating in the practice of osteopathic medicine. The director may seek the recommendations of the commission or foundation as to what programs have demonstrated the ability to meet this objective.

(i) Enter into contractual agreements with graduated health professionals to repay some or all of the debts they incurred in health professional schools in return for practicing their professions in an area in California designated as deficient in primary care services.

(j) Contract with institutions that award baccalaureate of science degrees in nursing in order to increase the participation of students from underrepresented groups in the nursing profession. The director may seek the recommendations of the commission as to what programs have demonstrated the ability to meet this objective.

SEC. 10. Section 128355 of the Health and Safety Code is amended to read:

128355. There is hereby created within the office a Health Professions Education Fund. The primary purpose of this fund is to provide scholarships and loans to students from underrepresented groups who are accepted to or enrolled in schools of medicine, dentistry, nursing, or other health professions, and to fund the Geriatric Nurse Practitioner and Clinical Nurse Specialist Scholarship Program pursuant to Article 3 (commencing with Section 128425). The fund shall also be used to pay for the cost of administering the program and for any other purpose authorized by this article. The level of expenditure by the office for the administrative support of the program created pursuant to this article shall be subject to review and approval annually through the State Budget process. The office may receive private donations to be deposited into this fund. All money in the fund is continuously appropriated to the office for the purposes of this article and Article 3 (commencing with Section 128425). The office shall manage this fund prudently in accordance with other provisions of law.

SEC. 11. Section 128375 of the Health and Safety Code is amended to read:

128375. (a) The Legislature hereby finds and declares that an adequate supply of professional nurses is critical to assuring the

health and well-being of the citizens of California, particularly those who live in medically underserved areas.

(b) The Legislature further finds that changes in the health care system of this state have increased the need for more highly skilled nurses. These changes include advances in medical technology and pharmacology, that necessitate the use of more highly skilled nurses in acute care facilities. Further, the containment of health care costs has led to increased reliance on home health care and outpatient services and to a higher proportion of more acutely ill patients in acute care facilities. Long-term care facilities also need more highly educated nursing personnel. Both shifts require a larger number of skilled nursing personnel.

(c) The Legislature further finds and declares that in nursing, as in other professions, certain populations are underrepresented. The Legislature also finds and declares that it is especially important that nursing care be provided in a way that is sensitive to the sociocultural variables that affect a person's health. The Legislature recognizes that the financial burden of obtaining a baccalaureate degree is considerable and that persons from families lacking adequate financial resources may need financial assistance to complete a baccalaureate degree.

(d) The Legislature further finds and declares that approximately 54.1 percent of all Californians live in rural and urban areas that have been designated underserved. The shortage of professional nurses in these areas makes it more difficult for those citizens to obtain health care and more difficult to attract and retain other health care professionals to those areas.

(e) The Legislature further finds and declares that since July 1, 1989, the Registered Nurse Education Fund has collected five million two hundred eight thousand five hundred seventy-four dollars ($5,208,574) to support the education of professional nurses and nursing students in California.

(f) The Legislature further finds and declares that since 1990, the Health Professions Education Foundation has awarded over four million dollars ($4,000,000) in scholarship and loan repayment to 754 nursing students and nurses in California.

(g) The Legislature further finds and declares that 107 award recipients are baccalaureate of science degree prepared nurses who have made a commitment to practice in medically underserved areas of California for a period of two years in exchange for loan repayment.

(h) The Legislature further finds that 485 of the award recipients are baccalaureate of science degree nursing students. Since 1990, 199 nurses have completed their contractual obligation with the Office of Statewide Planning and Development.

(i) The Legislature further finds and declares that, since 1994, 112 associate degree nursing scholarship awards have been made to students who have signed a contract with the office to complete a

baccalaureate of science degree within five years of completing their associate degree. Six students have completed the articulations pilot program.

(j) The Legislature further finds that recipients of the foundation's financial assistance program have come from very diverse backgrounds. Scholarships have been awarded to African-Americans, American Indians, Asian-Pacific Islanders, Caucasians, Hispanic-Americans, and other individuals.

SEC. 12. Section 128385 of the Health and Safety Code is amended to read:

128385. (a) There is hereby created the Registered Nurse Education Program within the Health Professions Education Foundation. Persons participating in this program shall be persons who agree in writing prior to graduation to serve in an eligible county health facility or a health manpower shortage area, as designated by the director of the office. Persons agreeing to serve in eligible county health facilities or health manpower shortage areas may apply for scholarship or loan repayment. The Registered Nurse Education Program shall be administered in accordance with Article 1 (commencing with Section 128330), except that all funds in the Registered Nurse Education Fund shall be used only for the purpose of promoting the education of registered nurses and related administrative costs. The Health Professions Education Foundation shall make recommendations to the director of the office concerning both the following:

(1) A standard contractual agreement to be signed by the director and any student who has received an award to work in an eligible county health facility or in a health manpower shortage area that would require a period of obligated professional service in the areas of California designated by the Health Manpower Policy Commission as deficient in primary care services. The obligated professional service shall be in direct patient care. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(2) Maximum allowable amounts for scholarships, educational loans, and loan repayment programs in order to assure the most effective use of these funds.

(b) Applicants may be persons licensed as registered nurses or graduates of associate degree nursing programs prior to entering a program granting a baccalaureate of science degree in nursing. Priority shall be given to applicants who hold associate degrees in nursing.

(c) Not more than 5 percent of the funds available under the Registered Nurse Education Program shall be available for a pilot project designed to test whether it is possible to encourage articulation from associate degree nursing programs to baccalaureate of science degree nursing programs. Persons who otherwise meet the

standards of subdivision (a) shall be eligible for educational loans when they are enrolled in associate degree nursing programs. If these persons complete a baccalaureate of science degree nursing program in California within five years of obtaining an associate degree in nursing and meet the standards of this article, these loans shall be completely forgiven.

(d) As used in this section, "eligible county health facility" means a county health facility that has been determined by the office to have a nursing vacancy rate greater than noncounty health facilities located in the same health facility planning area.

SEC. 13. Section 128395 of the Health and Safety Code is amended to read:

128395. In developing this program, the Health Professions Education Foundation shall solicit the advice of representatives of the Board of Registered Nurses, the California Nurses Association and other professional nurse organizations, the Chancellor of the California Community Colleges, the Chancellor of the California State University, and the California Association of Hospitals and Health Systems. The foundation shall solicit the advice of representatives who reflect the demographic diversity of California.

SEC. 14. Section 128400 of the Health and Safety Code is amended to read:

128400. There is hereby established in the State Treasury the Registered Nurse Education Fund. All money in the fund shall be used for the purposes specified in the California Registered Nurse Education Program established pursuant to this article. This fund shall receive money collected pursuant to subdivision (c) of Section 2815 of the Business and Professions Code.

SEC. 15. Section 128405 of the Health and Safety Code is repealed.

SEC. 16. Section 128435 of the Health and Safety Code is amended to read:

128435. (a) There is hereby created the Geriatric Nurse Practitioner and Clinical Nurse Specialist Scholarship Program within the Health Professions Education Foundation. Persons participating in this program shall be persons enrolled in nurse practitioner or clinical nurse specialist programs in this state who agree in writing prior to graduation to practice for a period of time, to be determined in accordance with paragraph (1) of subdivision (b), as geriatric nurse practitioners or geriatric clinical nurse specialists either in skilled nursing facilities licensed pursuant to Section 1250 or in other settings where care is provided primarily to geriatric patients. This program shall be administered in accordance with Article 1 (commencing with Section 128330), and Article 2 (commencing with Section 128375), except that all funds shall be used only for geriatric nurse practitioners and geriatric clinical nurse specialists and except that the programs shall be available only to those geriatric nurse practitioners and geriatric clinical nurse

specialists who agree to practice in skilled nursing facilities or other settings caring for geriatric patients.

(b) The Health Professions Education Foundation shall make recommendations to the director of the office concerning both of the following:

(1) A standard contractual agreement to be signed by the director and any student who has received an award to practice in a skilled nursing facility or other setting caring for geriatric patients that would require a period of obligated professional service. The obligated professional service shall be in direct patient care. The obligated professional service may be performed by a geriatric nurse practitioner or geriatric clinical nurse specialist either as an employee or independent contractor of a skilled nursing facility or other setting caring for geriatric patients, or as an employee or independent contractor of a physician providing care for geriatric patients in a skilled nursing facility or other setting. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(2) Maximum allowable amounts for scholarships and other financial assistance in order to assure the most effective use of these funds.

(c) To the extent feasible and appropriate, the Health Professions Education Foundation shall assure that the standard contractual agreement and other aspects of the Geriatric Nurse Practitioner and Clinical Nurse Specialist Scholarship Program are substantially similar to those developed for the Registered Nurse Education Program.

SEC. 17. Section 128445 of the Health and Safety Code is amended to read:

128445. In developing this program, the Health Professions Education Foundation shall solicit the advice of the representatives of the Board of Registered Nursing, the Student Aid Commission, the California Nurses Association, the California Association of Health Facilities, the California Association of Homes for the Aging, the Chancellor of the California State University, the President of the University of California, and other entities as may be appropriate.

SEC. 18. Section 128450 of the Health and Safety Code is amended to read:

128450. This program shall be funded through the Health Professions Education Fund pursuant to Section 128355.

SEC. 19. Section 128455 of the Health and Safety Code is repealed.

SEC. 20. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that vital scholarship funding may be distributed to students who will pursue degrees in health education during the 1999–2000 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 150

An act to add Section 26826.4 to the Government Code, relating to courthouse construction.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 26826.4 is added to the Government Code, to read:

26826.4. In addition to the total filing fee authorized pursuant to Section 26820.4, 26826, or 26827, after giving notice and holding a public hearing on the proposal, the Board of Supervisors of San Bernardino County may impose a surcharge not to exceed thirty-five dollars ($35) for the filing in superior court, other than in a limited civil case, of (a) a complaint, petition, or other first paper in a civil or probate action or special proceeding, and (b) a first paper on behalf of any defendant, respondent, intervenor, or adverse party. The surcharge shall be in an amount determined to be necessary by the board of supervisors to supplement the Courthouse Construction Fund, to be deposited in that fund and used solely for the purposes authorized for expenditures from that fund, and collection thereof shall terminate upon repayment of the amortized costs incurred, or 30 years from the sale of the bond, whichever occurs first. However, the surcharge shall not apply in instances in which no filing fee is charged or the filing fee is waived.

SEC. 2. The Legislature finds and declares that, because of unique risks to public safety applicable only to the courthouse in San Bernardino County, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Those unique risks are as follows: The San Bernardino Courthouse was constructed in 1926, and is only a few miles from two major fault lines. Four thousand to five thousand individuals use the courthouse each day. An engineering report indicates that the courthouse will not withstand a major earthquake. Therefore, this special statute is necessary.

CHAPTER 151

An act to add Sections 32121.7 and 32121.8 to the Health and Safety Code, relating to health care districts.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 32121.7 is added to the Health and Safety Code, to read:

32121.7. Notwithstanding any other provision of law, the transfer of assets by El Camino Hospital, a California nonprofit public benefit corporation ("El Camino Hospital-Corporation") that owns and operates El Camino Hospital, located in the City of Mountain View, pursuant to a transfer and ground lease from the El Camino Hospital District pursuant to subdivision (p) of Section 32121, is subject to this section.

(a) Before El Camino Hospital-Corporation transfers 50 percent or more of its assets, at fair market value, to one or more corporations, trusts, associations, partnerships, limited liability companies, or other entities or persons, in sum or by increment, the Board of Directors of El Camino Hospital District shall, by resolution, submit to the voters of the El Camino Hospital District a measure proposing the transfer. The measure shall be placed on the ballot of the special election held upon the request of the El Camino Hospital District or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the Board of El Camino Hospital District. If a majority of the voters voting on the measure vote in favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(b) El Camino Hospital-Corporation may transfer, for the benefit of the community served by the El Camino Hospital District, in the absence of adequate consideration, any part of the assets of El Camino Hospital-Corporation, including without limitation, the El Camino Hospital, the real property, equipment and other fixed assets, current assets, and cash, relating to the operation of El Camino Hospital to one or more nonprofit corporations, trusts, or associations to operate and maintain the assets.

(1) Any transfer of 50 percent or more of El Camino Hospital-Corporation's assets in sum or by increment, pursuant to this subdivision shall be deemed to be for the benefit of the community served by the El Camino Hospital District only if all of the following occur:

(A) The transfer agreement and all arrangements necessary thereto are approved by the Board of Directors of El Camino Hospital District, and the agreement and arrangements are fully discussed in advance of the board's decision to transfer the assets of El Camino Hospital-Corporation, in at least five properly noticed open and public meetings of the Board of Directors of El Camino Hospital District in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(B) The transfer agreement provides that the El Camino Hospital District shall approve all initial board members of the nonprofit corporation, trust, or association, and any subsequent board members as may be specified in the transfer agreement.

(C) The transfer agreement provides that all assets transferred to the nonprofit corporation, trust, or association, and all assets accumulated by the nonprofit corporation, trust, or association during the term of the transfer agreement arising out of or from the operation of the transferred assets shall be transferred back to the El Camino Hospital District upon termination of the transfer agreement, including any extension of the transfer agreement.

(D) The transfer agreement commits the nonprofit corporation, trust, or association to operate and maintain the assets of El Camino Hospital-Corporation for the benefit of the community served by the El Camino Hospital District.

(E) The transfer agreement requires that any funds received from the El Camino Hospital-Corporation at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce the El Camino Hospital-Corporation indebtedness, to acquire needed equipment for the El Camino Hospital-Corporation health care facilities, to operate, maintain, and make needed capital improvements to those health care facilities, to provide supplemental health care services or facilities for the communities served by the El Camino Hospital District, or to conduct other activities that would further a valid public purpose if undertaken directly by the El Camino Hospital District.

(2) A transfer of 33 percent or more but less than 50 percent of the El Camino Hospital-Corporation's assets, in sum or by increment, pursuant to this subdivision shall be deemed to be for the benefit of the communities served by the El Camino Hospital District only if both of the following occur:

(A) The transfer agreement and all arrangements necessary thereto are approved by the Board of Directors of El Camino Hospital District and the agreement and arrangements are fully discussed in advance of the board's decision to transfer the assets of El Camino Hospital-Corporation in at least two properly noticed open and public meetings of the Board of Directors of El Camino Hospital District in compliance with Section 32106 and the Ralph M.

Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(B) The transfer agreement meets all of the requirements of subparagraphs (B) to (E), inclusive, of paragraph (1).

(3) A transfer of 10 percent or more but less than 33 percent of the El Camino Hospital-Corporation's assets, in sum or by increment, pursuant to this subdivision shall be deemed to be for the benefit of the communities served by the El Camino Hospital District only if both of the following occur:

(A) The transfer agreement and all arrangements necessary thereto are approved by the Board of Directors of El Camino Hospital District and the agreement and arrangements are fully discussed in advance of the board's decision to transfer the assets of El Camino Hospital-Corporation in at least two properly noticed open and public meetings of the Board of Directors of El Camino Hospital District in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(B) The transfer agreements meets all of the requirements of subparagraphs (C) to (E), inclusive, of paragraph (1).

(4) Before El Camino Hospital-Corporation transfers, pursuant to this subdivision, 50 percent or more of its assets to one or more nonprofit corporations, trusts, or associations, in sum or by increment, the Board of Directors of El Camino Hospital District shall, by resolution, submit to the voters of the El Camino Hospital District a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of El Camino Hospital District or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the El Camino Hospital District. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(5) Notwithstanding any other provision of this subdivision, El Camino Hospital-Corporation shall not transfer any portion of its assets to a private nonprofit corporation, trust, or association that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(c) If the El Camino Hospital-Corporation board has previously transferred less than 50 percent of its assets pursuant to this subdivision, before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets.

(d) For purposes of this section, a "transfer" means the transfer of ownership of the assets of El Camino Hospital-Corporation. A lease

of the real property or the tangible personal property of El Camino Hospital District shall not be subject to this section except as required under Section 32121.4 or Section 32121.8.

(e) If El Camino Hospital District requests a special election pursuant to subdivision (a) or (b) it shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(f) The limitations set forth in subdivisions (a) and (b) shall not apply to any transfers, sales, leases, or other assignments of assets from El Camino Hospital-Corporation to El Camino Hospital District or entities controlled by El Camino Hospital District, provided that in the case of a transfer to an entity controlled by El Camino Hospital District, that entity shall continue to be governed by this section, imposing the same requirements on such entity as are imposed on El Camino Hospital-Corporation.

(g) Nothing in this section shall limit, modify, or otherwise alter the requirements imposed on El Camino Hospital-Corporation as a nonprofit corporation under the Corporations Code, including Attorney General notice and consent requirements if applicable.

SEC. 2. Section 32121.8 is added to the Health and Safety Code, to read:

32121.8. The El Camino Hospital-Corporation may provide for the operation and maintenance through tenants of the whole or any part of the El Camino Hospital, and for that purpose may enter into any lease agreement that it believes will best serve the interest of the El Camino Hospital District. A lease entered into with one or more corporations, partnerships, limited liability companies or other entities or persons for the operation of 50 percent or more of the El Camino Hospital, or that is part of or contingent upon a transfer of 50 percent or more of the El Camino Hospital-Corporation's assets, in sum or by increment, as described in Section 32127.7 shall be subject to the requirements of Section 32121.7. Any lease for the operation of El Camino Hospital shall require the tenant or lessee to comply with Section 32128. No lease for the operation of the entire hospital shall run for a term in excess of 30 years. No lease for the operation of less than the entire hospital shall run for a term in excess of 10 years.

SEC. 3. The Legislature finds and declares that, because of the unique relationship between El Camino Hospital, a California nonprofit public benefit corporation and El Camino Hospital District, a political subdivision of the State of California and the unique circumstances applicable to the ownership and operation of El Camino Hospital, located in the City of Mountain View, a statute of general applicability cannot be enacted within the meaning of Section 16 of Article IV of the California Constitution, and therefore, a special statute is necessary.

CHAPTER 152

An act to amend Section 1982.3 of the Education Code, to amend Section 53 of Chapter 330 of the Statutes of 1998, to amend Section 39 of Chapter 299 of, and Section 44 of Chapter 928 of, the Statutes of 1997, and to amend Section 31 of Chapter 204 of the Statutes of 1996, relating to school finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 1982.3 of the Education Code is amended to read:

1982.3. Any amounts received by a county superintendent of schools for revenue limit purposes that are derived from the average daily attendance generated by pupils enrolled in a community school shall be expended only for the purposes specified in subdivision (b) of Section 42238.18.

SEC. 2. Section 53 of Chapter 330 of the Statutes of 1998 is amended to read:

Sec. 53. The sum of three million one hundred thousand dollars $3,100,000 is reappropriated from the Proposition 98 Reversion Account to the Superintendent of Public Instruction in accordance with all of the following:

(a) Twenty thousand dollars ($20,000) for allocation on a one-time basis to the Pasadena Unified School for the purchase of textbooks for a tutoring program.

(b) Eighty thousand dollars ($80,000) for allocation on a one-time basis to the Santa Paula Unified School District for the purpose of renovating a swimming pool.

(c) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the Montebello Unified School District for the purpose of purchasing school security devices.

(e) One hundred eighty thousand dollars ($180,000) for allocation on a one-time basis to the Los Angeles County Office of Education for the purpose of developing middle school civic education curricula.

(g) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Superintendent of Public Instruction, for allocation on a grant basis to local educational agencies for support of home economics careers programs, pursuant to legislation enacted in the 1997–98 Regular Session.

(j) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Lucia Mar School District for the purpose of constructing a performing arts center.

(k) Three hundred thousand dollars ($300,000) for allocation on a one-time basis to the Los Angeles Unified School District for the purpose of support of the California Arts Initiative.

(m) One million dollars ($1,000,000) for allocation on a one-time basis to the Superintendent of Public Instruction, for allocation on a grant basis to local educational agencies, for the purpose of high school coaching training, pursuant to legislation enacted in the 1997–98 Regular Session.

(n) Seven hundred thousand dollars ($700,000) for allocation on a one-time basis to the Los Glamitos Unified School District for the purpose of support of the Los Alamitos High School for the Arts.

(o) Seventy thousand dollars ($70,000) for allocation on a one-time basis to the Pasadena Unified School District for support of the Pasadena Youth Center.

SEC. 3. Section 39 of Chapter 299 of the Statutes of 1997 is amended to read:

Sec. 39. (a) It is the intent of the Legislature that the funds appropriated by subdivision (b) of Section 41 of this act be used exclusively to implement the Standardized Account Code Structure. Any funds not needed to complete this project shall be returned by local education agencies to the Controller.

(b) Of the amount appropriated in subdivision (b) of Section 41 of this act, one million seventy-nine thousand five hundred seventy-five dollars ($1,079,575) shall be allocated by the Superintendent of Public Instruction to Phase I participants for the purpose of fully funding their Standardized Account Code Structure implementation contract agreements and grant awards entered into with the State Department of Education prior to the 1997–98 fiscal year.

(c) Of the amount appropriated in subdivision (b) of Section 41 of this act, seven hundred twenty-eight thousand seven hundred sixty-one dollars ($728,761) shall be allocated by the Superintendent of Public Instruction to Phase I participants for the purpose of providing total funding for a consortium that, on a consortium-wide basis, averages five dollars ($5) per unit of average daily attendance. Total funding shall include any allocations provided by subdivision (b), and appropriations authorized for disbursement from Item 6110-188-0001 of Chapter 162 of the Statutes of 1996 and Section 13 of Chapter 525 of the Statutes of 1995.

(d) Of the amount specified in subdivision (b) of Section 41 of this act, fifteen million one hundred sixty thousand six hundred sixty-four dollars ($15,160,664) shall be available for allocation by the Superintendent of Public Instruction to Phase II participants at the rate of five dollars ($5) per unit of average daily attendance, except as provided in subdivisions (e) and (k).

(1) In order for a school district or county office of education to reserve state funds available for allocation by this subdivision, the school district or county office of education shall notify the State

Department of Education by January 1, 1999, of its intent to implement the Standardized Account Code Structures. This notification shall be on forms prescribed by the Superintendent of Public Instruction. All funds available for allocation by this subdivision which are not reserved by a school district or county office of education by January 1, 1999, shall be reverted to the Proposition 98 Reversion Account within the General Fund, upon notification by the Superintendent of Public Instruction to the Controller's office.

(2) In order for a school district or county office of education to receive funds available for allocation by this subdivision, a school district or county office of education shall request disbursement of those funds on forms prescribed by the Superintendent of Public Instruction. Any request for funds must be received by the State Department of Education by September 30, 1999. Funds made available for allocation by this subdivision which are not requested by a school district or county office of education by September 30, 1999, shall be reverted to the Proposition 98 Reversion Account within the General Fund, upon notification by the Superintendent of Public Instruction to the Controller's office.

(e) Of the amount available for allocation pursuant to subdivision (d), a county office of education is eligible to receive a total seventy-five thousand dollars ($75,000) for the county office of education and all of the school districts in the county in which the county office of education is located, in lieu of the rate of five dollars ($5) per unit of average daily attendance pursuant to subdivision (d), under the following conditions:

(1) There is less than a combined total of 15,000 units of average daily attendance for the county office of education and all school districts in the county in which the county office of education is located.

(2) The county office of education and all of the school districts in the county in which the county office of education is located use the same accounting and budgeting system to implement the Standardized Account Code Structure. This subdivision shall also apply to Phase I participants.

(f) Of the amount available for allocation pursuant to subdivision (d), the Superintendent of Public Instruction may allocate a level of funds deemed necessary to allow a county office of education and school districts in the county in which the county office of education is located to implement the Standardized Account Code Structure without incurring a fiscal hardship. These exceptional necessary allocations shall be made on a case-by-case basis. This subdivision is applicable only in a county with a relatively small number of units of average daily attendance countywide, but where the county office of education and school districts do not meet the conditions set forth in subdivision (e).

(g) (1) For any school district that implements the Standardized Account Code Structure on the same accounting and budgeting system used by the county office of education in the county in which the school district is located, funds disbursed pursuant to subdivision (d) shall be allocated directly to the county office of education.

(2) Prior to the allocations pursuant to paragraph (1), the superintendent of the school district, or his or her designee, shall jointly certify with the county superintendent of schools, or his or her designee, of the county in which the school district is located, that the school district and the county office of education use the same accounting and budgeting system. This certification shall be on forms prescribed by the Superintendent of Public Instruction.

(h) (1) Except as provided in paragraph (3), each school district and county office of education that receives funds disbursed pursuant to subdivision (d), is required to fully implement the Standardized Account Code Structure within 36 months from the date the funds are disbursed to that school district or county office of education, or repay those funds to the state, together with interest at a rate based on the most current investment rate of the Pooled Money Investment Account as of the date the funds are disbursed. Interest shall accrue as of the date the funds are disbursed.

(2) The Superintendent of Public Instruction shall withhold from the apportionments to be made to the school district or the county office of education from the State School Fund an amount equal to the amount owed pursuant to paragraph (1), and those funds shall be immediately transferred by the Controller to the Proposition 98 Reversion Account within the General Fund.

(3) Only under extraordinary circumstances and on a case-by-case basis, the Superintendent of Public Instruction may grant extensions upon approval of the Department of Finance to the 36-month period for the purpose of determining whether repayment to the state is required pursuant to paragraph (1).

(i) (1) For purposes of this section, "fully implement" for a school district is defined as submitting the following reports based on a general ledger which reflects the Standardized Account Code Structure:

(A) The adopted budget for the school district pursuant to Section 42127 of the Education Code.

(B) The financial and budgetary status reports pursuant to Section 42130 of the Education Code.

(C) The annual statement of all receipts and expenditures pursuant to Section 42100 of the Education Code.

(2) For purposes of this section, "fully implement" for a county office of education is defined as submitting the following reports based on a general ledger which reflects the Standardized Account Code Structure:

(A) The adopted budget for the county office of education pursuant to Section 1622 of the Education Code.

(B) The financial and budgetary status reports pursuant to Section 1240 of the Education Code.

(C) The annual statement of all receipts and expenditures pursuant to Section 1628 of the Education Code.

(j) It is the intent of the Legislature in enacting this section that fiscal oversight responsibilities and services provided by the county superintendent of schools pursuant to Chapter 1213 of the Statutes of 1991 shall not be increased. Consequently, for any school district that uses an accounting and budgeting system that is different from the system used by the county office of education in the county in which the school district is located, the superintendent of the school district, or designee, shall jointly certify with the county superintendent of schools, or designee, of the county in which the school district is located, that all financial and budgetary data shall be submitted in a format that is acceptable to that county office of education accounting and budgeting system. Prior to the disbursement to the school district of any funds made available for allocation pursuant to subdivision (d), this certification shall be submitted to and on forms prescribed by the Superintendent of Public Instruction.

(k) (1) For any school district that uses an accounting and budgeting system that is different from the system used by the county office of education in the county in which the school district is located, the superintendent of the school district, or designee, shall jointly certify with the county superintendent of schools, or designee, of the county in which the school district is located, a specific portion of the five dollars ($5) per unit of average daily attendance, available for allocation pursuant to subdivision (d), that shall be allocated by the Superintendent of Public Instruction directly to the county superintendent of schools to pay for increased core services cost, if any, to the county office of education that are a direct result of the school district's implementation of the Standardized Account Code Structure.

(2) Upon request by either the school district or the county office of education, the Superintendent of Public Instruction shall determine the specific portion to be allocated directly to the county office of education pursuant to paragraph (1).

(*l*) Any school district or county office of education that receives funds pursuant to subdivision (d) is subject to an annual evaluation and to a final evaluation when full implementation is achieved. The evaluation shall be in a form or format prescribed by the Superintendent of Public Instruction.

(m) Acceptance by the school district or county office of education of the funds made available pursuant to this section shall constitute agreement by the school district or county office of education to the conditions set forth in this section.

(n) For purposes of this section, "Phase I participants" is defined as the consortia of school districts and county offices of education

approved by the State Department of Education to receive Standardized Account Code Structure funds appropriated by Item 6110-188-0001 of the Budget Act of 1996 or Section 13 of Chapter 525 of the Statutes of 1995.

(o) For purposes of this section, "Phase II participants" is defined as school districts and county offices of education that were not Phase I participants, but choose to implement the Standardized Account Code Structure and receive funds pursuant to subdivision (d).

(p) For purposes of this section, "average daily attendance" is defined as the unrevised 1996–97 first period report of average daily attendance for the first principal apportionment for school districts and county offices of education, adjusted by the Superintendent of Public Instruction to exclude specific categories of attendance inappropriate for purposes of the calculations made pursuant to this section.

(q) The Superintendent of Public Instruction is authorized to transfer funds between subdivision (c) and subdivision (d) as necessary to account for unanticipated amendments to the list of local education agencies participating in Phase I.

(r) It is the intent of the Legislature that the Standardized Account Code Structure conversion plan, approved by the State Board of Education in April 1997, shall be implemented in full.

SEC. 4. Section 44 of Chapter 928 of the Statutes of 1997 is amended to read:

Sec. 44. (a) The sum of two million dollars ($2,000,000) is hereby appropriated from the General Fund to the State Department of Education first for allocation for the home-to-school transportation program to school districts that are eligible for funding under Section 41862 of the Education Code based on having both a total cost per mile for the 1996–97 fiscal year for home-to-school transportation that exceeds the statewide average cost per mile, and either weather-related conditions or terrain-related conditions, as described in Section 41862 of the Education Code. If the funds appropriated for the purposes of this section are not sufficient to fully fund the formula established in Section 41863 of the Education Code for school districts eligible for funding under Section 41862 of the Education Code that have both a total cost per mile for the 1996–97 fiscal year for home-to-school transportation that exceeds the statewide average cost per mile, and either weather-related conditions or terrain-related conditions, the amounts apportioned to these school districts shall be reduced on a proportionate basis.

(b) Following allocation to districts that have both a total cost per mile of the 1997–98 fiscal year for home-to-school transportation that exceeds the statewide average cost per mile, and either weather-related conditions or terrain-related conditions, as described in Section 41862 of the Education Code, any remaining balances in the appropriation shall be used to augment funds allocated to school districts that are eligible for funding under Section

41862 of the Education Code based on reasons other than weather-related or terrain-related conditions.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subdivision (a) shall be deemed to be "General Fund revenues appropriate for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

SEC. 5. Section 31 of Chapter 204 of the Statutes of 1996 is amended to read:

Sec. 31. (a) The sum of four million dollars ($4,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the purpose of establishing the Discovery Science Center in Orange County for the 1996–97 fiscal year. Funds appropriated in this section shall be used on a one-time basis for the construction and startup costs for the Discovery Science Center in Orange County. The center shall be up to 80,000 square foot in area, hands-on, interactive learning facility. The center shall be in a centrally located site to benefit all of Orange County, and shall afford access to science to children who live in the less affluent areas of the county. The center shall serve as a resource for public elementary and secondary schools, and shall offer programs to Orange County schools, residents, and visitors.

(b) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

SEC. 6. The unencumbered balance as of June 30, 1999, of the funds appropriated by Item 6110-156-0001 of Section 2.00 of the Budget Act of 1997 (Chapter 282 of the Statutes of 1997) is hereby reappropriated to the Superintendent of Public Instruction for allocation to school districts on a one-time basis for the purpose of providing school districts an opportunity to apply for additional authorized units of adult education average daily attendance to support the development of site management information systems. Notwithstanding the provisions of Section 52616 and 52616.23 of the Education Code, or any other provision of law, funds allocated

pursuant to this section shall not be included in the ongoing base funding of individual adult education programs.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for funds appropriated to the Superintendent of Public Instruction and the State Department of Education to be allocated appropriately at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 153

An act to amend Section 1 of Chapter 868 of the Statutes of 1998, relating to school district reorganization, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. Section 1 of Chapter 868 of the Statutes of 1998 is amended to read:

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 March 1 of the school year in which the pupil first enters elementary school, and shall make a second election by March 1 of the school year in which the pupil enters middle school. Parents and legal guardians residing in the area of Eastview may elect, for each of their children, whether to attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District twice during the time that their child attends school. This election may be made once during any time the child attends kindergarten or any of grades 1 to 8, inclusive, and be made once during the time the child attends any of grades 9 to 12, inclusive. 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. This section is applicable to all pupils who reside within the area of Eastview of Los Angeles County regardless of whether the pupil previously attended a private 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; thence easterly at right angles from said last mentioned centerline a distance of 50 feet to the northerly termimus 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, thence northerly along said last mentioned boundary to the point of beginning.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify as soon as possible provisions of law relating to the area of Eastview in Los Angeles County and school district reorganization, it is necessary that this act take effect immediately.

CHAPTER 154

An act to add Section 42269 to of the Education Code, relating to school districts.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 22, 1999.]

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

SECTION 1. The Legislature finds and declares that adequate school facilities are essential in providing quality education to the pupils of California. The Legislature further finds and declares that educational reforms, such as a longer schoolday and mandatory summer school, may create a need for additional school facilities at schools operating a multitrack year-round educational program.

SEC. 2. Section 42269 is added to the Education Code, to read:

42269. (a) The State Department of Education shall, in consultation with school districts, the Department of Finance, the Legislative Analyst's Office, and any other affected parties, conduct a study of the grant program established pursuant to this article to develop an equitable method of phasing out the program over a multiyear period.

(b) The study conducted pursuant to subdivision (a) shall include, but not necessarily be limited to, all of the following:

(1) Findings regarding the challenges that school districts face in implementing a longer school year, mandatory summer school reform, and other educational reforms in conjunction with a multitrack year-round educational program.

(2) Analyze the need for school facilities in school districts that receive funding pursuant to this article.

(3) Determine the eligibility of school districts offering a multitrack year-round educational program for participation in the Leroy F. Greene School Facilities Act of 1998.

(4) Identify options for eliminating the grant program established pursuant to this article.

(5) Identify options to help school districts offering a multitrack year-round educational program provide the school facilities necessary to implement educational reforms.

(c) The State Department of Education shall complete the study conducted pursuant to this section and present its findings to the Legislature on or before July 1, 2000.

CHAPTER 155

An act to add Section 1278.5 to the Health and Safety Code, relating to health facilities.

[Approved by Governor July 22, 1999. Filed with
Secretary of State July 22, 1999.]

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

SECTION 1. Section 1278.5 is added to the Health and Safety Code, to read:

1278.5. (a) The Legislature finds and declares that it is the public policy of the State of California to encourage patients, nurses, and other health care workers to notify government entities of suspected unsafe patient care and conditions. The Legislature encourages this reporting in order to protect patients and in order to assist those government entities charged with ensuring that health care is safe. The Legislature finds and declares that whistleblower protections apply primarily to issues relating to the care, services, and conditions of a facility and are not intended to conflict with existing provisions in state and federal law relating to employee and employer relations.

(b) (1) No health facility shall discriminate or retaliate in any manner against any patient or employee of the health facility because that patient or employee, or any other person, has presented a grievance or complaint, or has initiated or cooperated in any investigation or proceeding of any governmental entity, relating to the care, services, or conditions of that facility.

(2) A health facility that violates this section shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000). The civil penalty shall be assessed and recovered through the same administrative process set forth in Chapter 2.4 (commencing with Section 1417) for long-term health care facilities.

(c) Any type of discriminatory treatment of a patient by whom, or upon whose behalf, a grievance or complaint has been submitted, directly or indirectly, to any governmental entity or received by a health facility administrator within 180 days of the filing of the grievance or complaint, shall raise a rebuttable presumption that the action was taken by the health facility in retaliation for the filing of the grievance or complaint.

(d) Any discriminatory treatment of an employee who has presented a grievance or complaint, or has initiated, participated, or cooperated in any investigation or proceeding of any governmental entity as specified in subdivision (b), if the health facility had knowledge of the employee's initiation, participation, or cooperation, shall raise a rebuttable presumption that the discriminatory action was taken by the health facility in retaliation, if the discriminatory action occurs within 120 days of the filing of the grievance or complaint. For purposes of this section, "discriminatory treatment of an employee" shall include discharge, demotion, suspension, any other unfavorable changes in the terms or conditions of employment, or the threat of any of these actions.

(e) The presumptions in subdivisions (c) and (d) shall be presumptions affecting the burden of producing evidence as provided in Section 603 of the Evidence Code.

(f) Any person who willfully violates this section is guilty of a misdemeanor punishable by a fine of not more than twenty thousand dollars ($20,000).

(g) An employee who has been discriminated against in employment pursuant to this section shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, and the legal costs associated with pursuing the case.

(h) This section shall not apply to an inmate of a correctional facility of either the Department of the Youth Authority or the Department of Corrections or to an inmate housed in a local detention facility including a county jail or a juvenile hall, juvenile camp, or other juvenile detention facility.

(i) This section shall not apply to a health facility that is a long-term health care facility, as defined in Section 1418. A health facility that is a long-term health care facility shall remain subject to Section 1432.

(j) Nothing in this section abrogates or limits any other theory of liability or remedy otherwise available at 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.

CHAPTER 156

An act to add Article 10 (commencing with Section 9149.20) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, relating to public employees.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 23, 1999.]

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

SECTION 1. Article 10 (commencing with Section 9149.20) is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, to read:

Article 10. Whistleblower Protection Act

9149.20. This article shall be known and may be cited as the Whistleblower Protection Act.

9149.21. It is the intent of the Legislature that state employees and other persons should disclose, to the extent not expressly prohibited by law, improper governmental activities.

9149.22. For the purposes of this article, the following words have the following meanings:

(a) "Committee" means any investigating committee of the Legislature.

(b) "Employee" means any individual appointed by the Governor or employed or holding office in a state agency, as defined by Section 11000, including the California State University and the University of California, or any public entity as defined by Section 7260, or any agency of local government, as defined in subdivision (d) of Section 8 of Article XIII B of the California Constitution.

(c) "Improper governmental activity" means any activity by a governmental agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

9149.23. (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to a legislative committee improper governmental activities.

(b) Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(c) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

(d) Nothing in this section shall be construed to abrogate or limit any other theory of liability or any other remedy that is otherwise available at law.

CHAPTER 157

An act to amend Section 3508 of the Government Code, relating to public employees.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 23, 1999.]

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

SECTION 1. Section 3508 of the Government Code is amended to read:

3508. (a) The governing body of a public agency may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in these positions or classes of positions to form, join, or participate in employee organizations where it is in the public interest to do so. However, the governing body may not prohibit the right of its employees who are full-time "peace officers" as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of those peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization.

(b) (1) This subdivision shall apply only to a county of the seventh class.

(2) For the purposes of this section, no distinction shall be made between a position designated as a peace officer position by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code at the time of the enactment of the 1971 amendments to this section, and a welfare fraud investigator or inspector position designated as a peace officer position by any amendment to that Chapter 4.5 at any time after the enactment of the 1971 amendments to this section.

(3) It is the intent of this subdivision to overrule San Bernardino County Sheriff's Etc. Assn. v. Board of Supervisors (1992) 7 Cal.App.4th 602, 611, with respect to San Bernardino County designating a welfare fraud investigator or inspector as a peace officer under this section.

(c) The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section.

SEC. 2. Due to the unique circumstances of San Bernardino County because of the court's decision in San Bernardino County Sheriff's Etc. Assn. v. Board of Supervisors (1992) 7 Cal.App.4th 602, 611, the Legislature hereby finds and declares that a general statute cannot be made within the meaning of Section 16 of Article IV of the California Constitution. Therefore, this legislation is necessarily applicable only to San Bernardino County.

CHAPTER 158

An act to amend Section 84200.5 of, and to add Sections 84200.3 and 84200.4 to, the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 23, 1999.]

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

SECTION 1. Section 84200.3 is added to the Government Code, to read:

84200.3. (a) In connection with a statewide direct primary held in March of an even-numbered year, and any other election held on the same day as that election, the following candidates and committees shall file campaign statements pursuant to Section 84200.4 for the calendar year prior to the election:

(1) All candidates who have filed or are required to file a statement of intention pursuant to Section 85200 in connection with the election, their controlled committees, and committees primarily formed to support or oppose those candidates.

(2) Committees formed pursuant to subdivision (a) of Section 82013 that are primarily formed to support the qualification, passage, or defeat of a measure being voted upon in the election.

(3) State and county general purpose committees formed pursuant to subdivision (a) of Section 82013, except that a committee covered by this subdivision is not required to file pursuant to subdivision (a) of Section 84200.4 if it has not made contributions or independent expenditures totaling five hundred dollars ($500) or more during the period July 1 through September 30.

(4) City general purpose committees formed pursuant to Section 82013, except that a committee covered by this subdivision is not required to file pursuant to subdivision (a) of Section 84200.4 if it has made contributions or independent expenditures totaling five

hundred dollars ($500) or more during the period July 1 through September 30.

(5) Candidates and committees not covered under paragraphs (1) to (4), inclusive, that make contributions totaling five thousand dollars ($5,000) or more to an elected state officer, a candidate for elective state office, his or her controlled committee, or a committee primarily formed to support or oppose any elected state officer or candidate for elective state office during the period July 1, through September 30 or July 1 through December 31.

(6) Any slate mailer organization that produces a slate mailer supporting or opposing a candidate or measure being voted on in the election if the slate mailer organization receives payments totaling five hundred dollars ($500) or more from any person for the support of or opposition to a candidate or ballot measure in one or more slate mailers, or expends five hundred dollars ($500) or more to produce one or more slate mailers.

(b) A candidate , committee, or slate mailer organization required to file a campaign statement pursuant to this section is not required to file a campaign statement pursuant to Section 84200 or 84218 for the period ending December 31 of the year prior to the statewide direct primary election.

(c) A candidate or committee who has filed a campaign statement pursuant to this section is not required to file additional statements pursuant to Section 84202.3, 84202.5, or 84202.7.

SEC. 2. Section 84200.4 is added to the Government Code, to read:

84200.4. In addition to other reports required under this chapter, campaign statements shall be filed as follows in connection with a statewide direct primary election held in March of an even-numbered year or any other election held on that date:

(a) For the period ending September 30 of the year prior to the election, a statement shall be filed no later than October 10 for the period ending September 30.

(b) For the period ending December 31 of the year prior to the election, a statement shall be filed no later than January 10 of the year of the election.

SEC. 3. Section 84200.5 of the Government Code is amended to read:

84200.5. In addition to the campaign statements required by Section 84200, elected officers, candidates, and committees shall file preelection statements as follows:

(a) During an even-numbered year, all candidates for elective state office being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose an elected state officer or a state candidate being voted upon on the first Tuesday after the first Monday in June or November and all elected state officers who, during the reporting periods covered by Section

84200.7, contribute to any committee required to report receipts, expenditures, or contributions pursuant to this title, or make an independent expenditure, shall file the preelection statements specified in Section 84200.7. However, a candidate who is not being voted upon in the November election, his or her controlled committee, and any committee primarily formed to support or oppose that candidate is not required to file statements in connection with the November election pursuant to subdivision (b) of Section 84200.7, unless, during the reporting periods covered by Section 84200.7, the candidate, his or her controlled committee, or any committee primarily formed to support or oppose that candidate contributes to any committee required to report receipts, expenditures, or contributions pursuant to this title or makes independent expenditures.

(b) During an even-numbered year, all candidates not specified in subdivision (a) who are being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose those candidates or a measure being voted upon on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in subdivision (a) of Section 84200.7 in the case of a June election, or subdivision (b) of Section 84200.7 in the case of a November election.

(c) All candidates being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year, their controlled committees, and committees primarily formed to support or oppose a candidate or a measure being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in Section 84200.8.

(d) In an even-numbered year in which the statewide direct primary election is held on the first Tuesday after the first Monday in June, a state or county general purpose committee formed pursuant to subdivision (a) of Section 82013 shall file the statements specified in Section 84200.7 if it makes contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement. A state or county general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the statements specified in Section 84200.7.

(e) During an even-numbered year in which the direct primary election is held on a date other than the first Tuesday after the first Monday in June, a state or county general purpose committee formed pursuant to subdivision (a) of Section 82013 shall file the statements specified in Section 84200.8 if it makes contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement. A state or county general purpose committee formed pursuant to subdivision (b) or

(c) of Section 82013 is not required to file the statements specified in Section 84200.8.

(f) City general purpose committees shall file statements as follows:

(1) City general purpose committees in a city which has an election on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the statements specified in subdivision (a) or (b) of Section 84200.7 for the six-month period in which the city election is held, if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement.

(2) City general purpose committees in a city which has an election on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in Section 84200.8 if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement.

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.

SEC. 5. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the campaign filing requirements enacted by this act become effective for candidates seeking election at the March 7, 2000, statewide direct primary election, it is necessary for this act to take effect immediately.

CHAPTER 159

An act to amend Sections 6300, 7420, 7441, and 7443 of the Elections Code, relating to the Republican Party, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 23, 1999.]

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

SECTION 1. Section 6300 of the Elections Code is amended to read:

6300. (a) This chapter shall be applicable only to the presidential primary ballot of the Republican Party, and qualified parties for which no other provisions apply.

(b) This chapter shall be applicable to the selection of delegates to the Republican Party National Convention to the extent that the constitution, bylaws, and rules of the Republican Party do not provide otherwise. The California Republican Party shall notify the Secretary of State of any material changes in the constitution, bylaws, and rules of the Republican Party relating to the selection of delegates to the Republican Party National Convention.

SEC. 2. Section 7420 of the Elections Code is amended to read:

7420. (a) Except as provided in subdivision (b), at every direct primary election a county central committee shall be elected in each county.

(b) Commencing with the statewide direct primary election on March 7, 2000, except for the County of Orange, the members of each county central committee to be elected from an odd-numbered Assembly district shall be elected for a term that ends on the date of the second statewide direct primary election following that election, and the members elected from an even-numbered Assembly district shall be elected for a term that ends on the date of the first statewide direct primary election following that election. At each statewide direct primary election after the March 7, 2000, election, new members shall be elected to county central committees to replace the members whose terms are expiring and those members shall serve terms that end on the second statewide direct primary election following their election.

(c) When district boundaries are redrawn and districts are renumbered in accordance with the decennial census, a member of a county central committee may run for election in a newly numbered district at the next election even though his or her current term of office has not expired. If a person is elected in the newly numbered district and takes the oath of office, the person is deemed to have resigned from his or her previous district office at that time.

SEC. 3. Section 7441 of the Elections Code is amended to read:

7441. At the first organizational meeting, a committee shall organize by selecting a chairperson, a secretary, and any other officers and committees as it deems necessary for carrying on the affairs of this party. After each election, an organizational or reorganizational meeting shall take place within 30 days after new county central committee members receive certificates of election.

SEC. 4. Section 7443 of the Elections Code is amended to read:

7443. The committees shall perform any other duties and services for this political party as seem to be for the benefit of the party.

Members of a county central committee may serve after the expiration date of their terms until the election and qualification of the new members replacing them on the county central committees.

SEC. 5. The Legislature finds and declares as follows:

(1) The amendments to Section 6300 of the Elections Code made by Section 1 of this act shall be deemed in conformance with the constitution, bylaws, and rules of the Republican Party.

(2) It is the intent of the Legislature that nothing in Section 1 of this act shall be deemed to amend any provision of the Open Primary Act (Proposition 198, approved by the voters at the statewide primary election on March 26, 1996).

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 effectuate the purposes of this act in the most timely manner possible, so as (1) to comply with rules of the Republican Party relating to the selection of delegates to the Republican Party National Convention and (2) to provide sufficient lead time for implementation of this act's changes in the manner of electing Republican county central committee members, it is necessary that this act take effect immediately.

CHAPTER 160

An act to add Section 31720.6 to the Government Code, relating to county employee retirement benefits.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 23, 1999.]

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

SECTION 1. Section 31720.6 is added to the Government Code, to read:

31720.6. (a) If a safety member, a firefighter, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200) or both or under this retirement system or under the Public Employees' Retirement System or under a retirement system established under this chapter in another county, and develops cancer, the cancer so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of employment. The cancer so developing or manifesting itself in those cases shall in

no case be attributed to any disease existing prior to that development or manifestation.

(b) Notwithstanding the existence of nonindustrial predisposing or contributing factors, any safety member, firefighter member, or member active in law enforcement permanently incapacitated for the performance of duty as a result of cancer shall receive a service-connected disability retirement if the member demonstrates that he or she was exposed to a known carcinogen as a result of performance of job duties.

"Known carcinogen" for purposes of this section means those carcinogenic agents recognized by the International Agency for Research on Cancer, or its director.

(c) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence, that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer, provided that the primary site of the cancer has been established. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) "Firefighter," for purposes of this section, includes a member engaged in active fire suppression who is not classified as a safety member.

(e) "Member in active law enforcement," for purposes of this section, includes a member engaged in active law enforcement who is not classified as a safety member.

CHAPTER 161

An act to amend Sections 31760.2, 31785.1, and 31786.1 of the Government Code, relating to county employees retirement.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 23, 1999.]

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

SECTION 1. Section 31760.2 of the Government Code is amended to read:

31760.2. Notwithstanding Section 31760.1, upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of his or her retirement allowance, if not

modified in accordance with one of the optional settlements specified in this article, shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance under this section or if she or he dies before every child of the deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age collectively, to continue until every such child dies or attains that age. However, no child shall receive any allowance after marrying or attaining the age of 18 years.

No allowance shall be paid under this section to a surviving spouse unless he or she was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death and no other person has been designated in an order of a court in a domestic relations proceeding as a payee.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school, as determined by the board.

If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section and the total retirement allowance income received by him or her during his or her lifetime did not equal or exceed his or her accumulated normal contributions, his or her designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

No allowance shall be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31760.1.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

This section shall not be operative in any county until the time as the board of retirement shall, by a majority vote, make this section applicable in the county.

SEC. 2. Section 31785.1 of the Government Code is amended to read:

31785.1. Notwithstanding Section 31785, upon the death of any safety member, after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of his or her retirement allowance if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance under this section or if she or he dies before every child of

the deceased safety member attains the age of 18 years, then the allowance which the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age, collectively, to continue until every child dies or attains that age. However, no child shall receive any allowance after marrying or attaining the age of 18 years.

No allowance shall be paid under this section to a surviving spouse unless he or she was married to the safety member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death and no other person has been designated in an order of a court in a domestic relations proceeding as a payee.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

No allowance shall be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31785.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

This section shall not be operative in any county until the time as the board of retirement shall, by a majority vote, make this section applicable in the county.

SEC. 3. Section 31786.1 of the Government Code is amended to read:

31786.1. Notwithstanding Section 31786, upon the death of any member after retirement for service-connected disability, his or her retirement allowance as it was at his or her death if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance under this section or if he or she dies before every child of the deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age, collectively, to continue until every such child dies or attains that age. However, no child shall receive any allowance after marrying or attaining the age of 18 years.

No allowance shall be paid under this section to a surviving spouse unless he or she was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death and no other person has been designated in an order of a court in a domestic relations proceeding as a payee.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 if the children remain unmarried and

are regularly enrolled as full-time students in an accredited school as determined by the board.

No allowance shall be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31786.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

This section shall not be operative in any county until the time as the board of retirement shall, by a majority vote, make this section applicable in the county.

CHAPTER 162

An act to amend Section 51747.3 of, and to add Section 47612.5 to, the Education Code, relating to charter schools.

[Approved by Governor July 22, 1999. Filed with Secretary of State July 23, 1999.]

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

SECTION 1. Section 47612.5 is added to the Education Code, to read:

47612.5. (a) Notwithstanding any other provision of law, a charter school shall do all of the following:

(1) Offer, at a minimum, the same number of minutes of instruction set forth in paragraph (3) of subdivision (a) of Section 46201 for the appropriate grade levels.

(2) Maintain written contemporaneous records that document all pupil attendance and shall make these records available for audit and inspection.

(3) Certify that its pupils have participated in the state testing programs specified in Chapter 5 (commencing with Section 60600) of Part 33 in the same manner as other pupils attending public schools as a condition of apportionment of state funding.

(b) Notwithstanding any other provision of law, a charter school that provides independent study shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted thereunder. The State Board of Education shall adopt regulations that apply this article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (*l*) of Section 47605.

SEC. 2. Section 51747.3 of the Education Code is amended to read:

51747.3. (a) Notwithstanding any other provision of law, a local education agency, including, but not limited to, a charter school, may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the agency has provided any funds or other thing of value to the pupil or his or her parent or guardian that the agency does not provide to pupils who attend regular classes or to their parents or guardians. A charter school may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the charter school has provided any funds or other thing of value to the pupil or his or her parent or guardian that a school district could not legally provide to a similarly situated pupil of the school district, or to his or her parent or guardian.

(b) Notwithstanding paragraph (1) of subdivision (d) of Section 47605 or any other provision of law, community school and independent study average daily attendance shall be claimed by school districts, county superintendents of schools, and charter schools only for pupils who are residents of the county in which the apportionment claim is reported, or who are residents of a county immediately adjacent to the county in which the apportionment claim is reported.

(c) The Superintendent of Public Instruction shall not apportion funds for reported average daily attendance, through full-time independent study, of pupils who are enrolled in school pursuant to subdivision (f) of Section 48204.

(d) In conformity with Provisions 25 and 28 of Section 2.00 of the Budget Act of 1992, this section is applicable to average daily attendance reported for apportionment purposes beginning July 1, 1992. The provisions of this section are not subject to waiver by the State Board of Education, by the State Superintendent of Public Instruction, or under any provision of Part 26.8 (commencing with Section 47600).

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.

CHAPTER 163

An act to add Section 1714.21 to the Civil Code, and to add Section 1797.196 to the Health and Safety Code, relating to emergency care.

[Approved by Governor July 22, 1999. Filed with
Secretary of State July 23, 1999.]

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

SECTION 1. It is the intent of the Legislature that an automated external defibrillator may be used for the purpose of saving the life of another person in cardiac arrest when used in accordance with Section 1714.21 of the Civil Code.

SEC. 2. Section 1714.21 is added to the Civil Code, to read:

1714.21. (a) For purposes of this section, the following definitions shall apply:

(1) "AED" or "defibrillator" means an automated or automatic external defibrillator.

(2) "CPR" means cardiopulmonary resuscitation.

(b) A person who has completed a basic CPR and AED use course that complies with regulations adopted by the Emergency Medical Services (EMS) Authority and the standards of the American Heart Association or the American Red Cross for CPR and AED use, and who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency shall not be liable for any civil damages resulting from any acts or omissions in rendering the emergency care.

(c) A person or entity who provides CPR and AED training to a person who renders emergency care pursuant to subdivision (b) shall not be liable for any civil damages resulting from any acts or omissions of the person rendering the emergency care.

(d) A physician who is involved with the placement of an AED and any person or entity responsible for the site where an AED is located shall not be liable for any civil damages resulting from any acts or omissions of a person who renders emergency care pursuant to subdivision (b) if that physician, person, or entity has complied with all requirements of Section 1797.196 of the Health and Safety Code that apply to that physician, person, or entity.

(e) The protections specified in this section shall not apply in the case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care or treatment by the use of an AED.

(f) Nothing in this section shall relieve a manufacturer, designer, developer, distributor, installer, or supplier of an AED or defibrillator of any liability under any applicable statute or rule of law.

SEC. 3. Section 1797.196 is added to the Health and Safety Code, to read:

1797.196. (a) For purposes of this section, "AED" or "defibrillator" means an automated or automatic external defibrillator.

(b) In order to ensure public safety, any person who acquires an AED shall do all of the following:

(1) Comply with all regulations governing the training, use, and placement of an AED.

(2) Notify an agent of the local EMS agency of the existence, location, and type of AED acquired.

(3) Ensure all of the following:

(A) That expected AED users complete a training course in cardiopulmonary resuscitation and AED use that complies with regulations adopted by the Emergency Medical Services (EMS) Authority and the standards of the American Heart Association or the American Red Cross.

(B) That the defibrillator is maintained and regularly tested according to the operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, and the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority.

(C) That the AED is checked for readiness after each use and at least once every 30 days if the AED has not been used in the preceding 30 days. Records of these periodic checks shall be maintained.

(D) That any person who renders emergency care or treatment on a person in cardiac arrest by using an AED activates the emergency medical services system as soon as possible, and reports any use of the AED to the licensed physician and to the local EMS agency.

(E) That there is involvement of a licensed physician in developing a program to ensure compliance with regulations and requirements for training, notification, and maintenance.

(c) A violation of this provision shall not be subject to penalties pursuant to Section 1798.206.

CHAPTER 164

An act to add Section 233 to the Labor Code, relating to employment.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 233 is added to the Labor Code, to read:

233. (a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the

employee's then current rate of entitlement, to attend to an illness of a child, parent, or spouse of the employee. All conditions and restrictions placed by the employer upon the use by an employee of sick leave also shall apply to the use by an employee of sick leave to attend to an illness of his or her child, parent, or spouse. This section does not extend the maximum period of leave to which an employee is entitled under Section 12945.2 of the Government Code or under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

(1) "Child" means a biological, foster, or adopted child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

(2) "Employer" means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(3) "Parent" means a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

(4) "Sick leave" means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the following reasons:

(A) The employee is physically or mentally unable to perform his or her duties due to illness, injury, or a medical condition of the employee.

(B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee.

(C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination.

"Sick leave" does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers' compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer's general assets.

(c) No employer shall deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness of a child, parent, or spouse of the employee.

(d) Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief.

(e) Upon the filing of a complaint by an employee, the Labor Commissioner shall enforce the provisions of this section in accordance with the provisions of Chapter 4 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee may

bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney's fees.

(f) The rights and remedies specified in this section are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law.

CHAPTER 165

An act to amend Sections 17207 and 24347.5 of, and to add Sections 195.83, 195.84, and 195.85 to, the Revenue and Taxation Code, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 195.83 is added to the Revenue and Taxation Code, to read:

195.83. In the 1998–99 fiscal year, the county auditor of an eligible county, proclaimed by the Governor to be in a state of disaster as a result of a freeze or any other related casualty that occurred in that county during the winter of 1998–99, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for the 1998–99 fiscal year resulting from the reassessment by the county assessor pursuant to paragraph (1) of subdivision (a) of Section 170 of those properties that are eligible properties as a result of that disaster, except that the amount certified shall not include any estimated property tax revenue reductions to school districts (other than basic state aid school districts) and county offices of education. For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 2. Section 195.84 is added to the Revenue and Taxation Code, to read:

195.84. After the county auditor of an eligible county, as described in Section 195.83, has made the applicable certification to the Director of Finance pursuant to that section, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the

Controller shall make the appropriate allocation to the county within 10 working days thereafter.

SEC. 3. Section 195.85 is added to the Revenue and Taxation Code, to read:

195.85. On or before June 30, 2000, each eligible county, as described in Section 195.83, shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 195.84, less the actual amount of its property tax revenue lost on the regular secured and supplemental rolls with respect to those eligible properties described in Section 195.83 as a result of the reassessment of those properties pursuant to paragraph (1) of subdivision (a) of Section 170, excluding any property tax revenue lost by school districts (other than basic state aid school districts) and county offices of education. If the actual amount of property tax revenue lost by an eligible county in the immediately preceding fiscal year, as described and limited in the preceding sentence, exceeds the amount allocated by the Controller to that county pursuant to Section 195.84, the Controller shall allocate the amount of that excess to that eligible county. For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 4. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then 50 percent of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), (17), (18), (19), and (20) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 5. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other income years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five income years following the income year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then 50

percent of that excess disaster loss shall be carried forward to each of the next 10 income years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the income years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other income years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior income years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other income years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), (17), (18), (19), and (20) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the income year in which the disaster occurred.

SEC. 6. The Legislature finds and declares that this act fulfills a statewide public purpose because of both of the following:

(a) The Governor of California has officially proclaimed that the freeze that occurred in California during the winter of 1998–99 was a disaster, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) This act is consistent with and supplements the proclaimed disaster relief by providing necessary fiscal assistance and tax relief to affected jurisdictions and persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely provide essential relief to those persons and jurisdictions who have suffered damage or loss as a result of the freeze

that occurred in California during the winter of 1998–99, it is necessary that this act take effect immediately.

CHAPTER 166

An act to add Section 31013.5 to the Water Code, relating to the Mammoth Community Water District.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 31013.5 is added to the Water Code, to read:

31013.5. (a) Notwithstanding any other provision of law, the Mammoth Community Water District may acquire property and construct, maintain, operate, sell, and lease facilities, including, but not limited to, wells, plants, and pipes for the distribution of heated water or steam, that are necessary to develop, extract, and distribute geothermal water resources in order to provide space heating for buildings and other facilities within the boundaries of the district.

(b) The district may finance the acquisition of property and the construction of facilities under this section by utilizing the same financing methods that are available to the district under this division to finance water facilities.

(c) The powers granted by other provisions of this division may be exercised by the district in connection with the authority granted to the district under this section.

CHAPTER 167

An act to add and repeal Section 781.5 of the Welfare and Institutions Code, relating to juvenile court records.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 781.5 is added to the Welfare and Institutions Code, to read:

781.5. (a) Notwithstanding Section 781, in any case where a minor has been cited to appear before a probation officer, has been taken before a probation officer pursuant to Section 626, or has been taken before any officer of a law enforcement agency, and no

accusatory pleading or petition to adjudge the minor a ward of the court has been filed, the minor may request in writing that the law enforcement agency and probation officer having jurisdiction over the offense destroy their records of the arrest or citation. A copy of the request shall be served upon the district attorney of the county having jurisdiction over the offense. The law enforcement agency and probation officer having jurisdiction over the offense, upon a determination that the minor is factually innocent, shall, with the concurrence of the district attorney, seal their records with respect to the minor and the request for relief under this section for three years from the date of the arrest or citation and thereafter destroy the records and the request. A determination of factual innocence shall not be made pursuant to this subdivision unless the law enforcement agency and probation officer, with the concurrence of the district attorney, determine that no reasonable cause exists to believe that the minor committed the offense for which the arrest was made or the citation was issued. The law enforcement agency and probation officer having jurisdiction over the offense shall notify the Department of Justice, and any other law enforcement agency or probation officer that arrested or cited the minor or participated in the arrest or citing of the minor for an offense for which the minor has been found factually innocent under this subdivision, of the sealing of the minor's records and the reason therefor. The Department of Justice and any law enforcement agency or probation officer so notified shall forthwith seal its records of the arrest or citation and the notice of sealing for three years from the date of the arrest or citation, and thereafter destroy those records and the notice of sealing. The law enforcement agency and probation officer having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest or citation that they have given to any local, state, or federal agency or to any other person or entity. Each agency, person, or entity within the State of California receiving that request shall destroy its records of the arrest or citation and that request, unless otherwise provided in this section.

(b) If, after receipt by the law enforcement agency, probation officer, and the district attorney of a request for relief under subdivision (a), the law enforcement agency, probation officer, and district attorney do not respond to the request by accepting or denying the request within 60 days after the running of the statute of limitations for the offense for which the minor was cited or arrested or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the request shall be deemed to be denied. In any case where the request of a minor to the law enforcement agency and probation officer to have a record destroyed is denied, petition may be made to the juvenile court that would have had jurisdiction over the matter. A copy of the 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 the hearing. Notwithstanding any other provision of law, any judicial determination of factual innocence made pursuant to this subdivision may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties that is material, relevant, and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this subdivision or subdivision (d) shall not be made unless the court finds that no reasonable cause exists to believe that the minor committed the offense for which the arrest was made or the citation was issued. In any court hearing to determine the factual innocence of a minor, the initial burden of proof shall rest with the minor to show that no reasonable cause exists to believe that the minor committed the offense for which the arrest was made or the citation was issued. If the court finds that this showing of no reasonable cause has been made by the minor, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the minor committed the offense for which the arrest was made or the citation was issued.

(c) If the court finds the minor to be factually innocent of the charges for which the arrest was made or the citation was issued, then the court shall order the law enforcement agency and probation officer having jurisdiction over the offense, the Department of Justice, and any law enforcement agency or probation officer that arrested or cited the minor or participated in the arrest or citation of the minor for an offense for which the minor has been found factually innocent under this section, to seal their records relating to the minor and the court order to seal and destroy those records, for three years from the date of the arrest or citation and thereafter to destroy those records and the court order to seal and destroy those records. The court shall also order the law enforcement agency and probation officer having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest that 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 that request shall destroy its records of the arrest or citation and the request to destroy those records, unless otherwise provided in this section. The court shall give to the minor a copy of any court order concerning the destruction of the arrest or citation records.

(d) Notwithstanding Section 781, in any case where a minor has been arrested or a citation has been issued, and an accusatory pleading or petition to adjudge the minor a ward of the court has been filed, but not sustained, the minor may, at any time after dismissal of the proceeding, request in writing from the court that dismissed the proceeding a finding that the minor is factually innocent of the charges for which the arrest was made or the citation was issued. A copy of the request shall be served on the district

attorney of the county in which the accusatory pleading or petition was filed at least 10 days prior to the hearing on the minor's factual innocence. The district attorney may present evidence to the court at the hearing. The 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 or the citation was issued, then the court shall grant the relief as provided in subdivision (c).

(e) Notwithstanding Section 781, in any case where a minor has been arrested or cited and an accusatory pleading or petition to adjudge the minor a ward of the court has been filed, but not sustained, and it appears to the judge presiding at the proceeding that the minor was factually innocent of the offense, the court, upon the written or oral motion of any party in the case or on the court's own motion, may grant the relief provided in subdivision (c). If the district attorney objects to the court granting that relief, the district attorney may request a hearing as to the minor's factual innocence . This hearing shall be conducted as provided in subdivision (b).

(f) In any case where a minor who has been arrested or cited is granted relief pursuant to this section, the law enforcement agency and probation officer having jurisdiction over the offense or the court shall issue a written declaration to the minor stating that it is the determination of the law enforcement agency and probation officer having jurisdiction over the offense or the court that the minor is factually innocent of the charges for which the minor was arrested or cited and that the minor is thereby exonerated. Thereafter, the arrest or citation shall be deemed not to have occurred and the minor may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by minors requesting the destruction of their arrest or citation records and for the written declaration that a minor was found factually innocent under this section.

(h) Documentation of arrest or citation records that are destroyed pursuant to this section that are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the minor. The minor shall be notified in writing by the law enforcement agency and probation officer having jurisdiction over the offense of the sealing and destruction of the arrest and citation records pursuant to this section.

(i) Any finding that a minor is factually innocent pursuant to this section shall not be admissible as evidence in any action.

(j) Destruction of records of arrest or citation pursuant to this section shall be accomplished by permanent obliteration of all entries or notations upon those records pertaining to the arrest or citation, and the record shall be prepared again so that it appears that the arrest or citation never occurred. However, where the only entries on the record pertain to the arrest or citation and 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 this section if the minor or another individual arrested or cited for the same offense has filed a civil action against the peace officers, law enforcement agency, or probation officer that made the arrest, issued the citation, or commenced the proceedings and if the agency or officer that is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil action, 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 this section shall be sealed and destroyed pursuant to this section.

(*l*) Any relief that is available to a minor under this section for an arrest or citation shall also be available for a minor who is taken into temporary custody and then released pursuant to Sections 625 and 626.

(m) This section shall not apply to any offense that is classified as an infraction.

(n) (1) 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 that 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 decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any decision referred to in this subdivision that is a judgment by the appellate division of the superior court, shall be appealed by the Attorney General.

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.

CHAPTER 168

An act to add and repeal Section 21655.12 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 21655.12 is added to the Vehicle Code, to read:

21655.12. (a) The Department of Transportation shall establish exclusive or preferential use of highway lanes for high-occupancy vehicles on that portion of State Highway Route 10 known as the San Bernardino Freeway, and shall set the minimum occupancy level on those lanes at two persons, including the driver.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2001, the Department of Transportation shall complete, and prepare and submit to the Legislature a report regarding, an operational study concerning the use of the lanes established pursuant to subdivision (a). That study shall include, but is not limited to, an analysis of any discernable changes in motorist behavior as a result of the establishment of the lanes.

(c) This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 169

An act to amend Section 97 of the Streets and Highways Code, and to amend Section 42010 of the Vehicle Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 97 of the Streets and Highways Code is amended to read:

97. (a) The department, in consultation with the Department of the California Highway Patrol, shall develop nine pilot projects, six in northern California and three in southern California. The portions of the highways involved in the projects shall be designated and

identified as "Safety Enhancement-Double Fine Zones" and shall be in the following locations:

(1) On Route 37, between the intersection with Route 121 and the intersection with Route 29.

(2) On Route 4, between the intersection with the Cummings Skyway and the intersection with Route 80.

(3) On Route 74, between the intersection with Route 5 and the intersection with the Riverside-Orange County line.

(4) On Route 46, between the intersection with Route 101 and the junction with Route 41.

(5) On the Golden Gate Bridge.

(6) On Route 12, between the intersection with Walters Road in the City of Suisun and the intersection with Lower Sacramento Road in the City of Lodi.

(7) On Route 138, between the intersection with Avenue T and Pearblossom Highway and the intersection with Interstate Highway Route 15.

(8) On Route 101, between the intersection with Boronda Road and the intersection with the San Benito-Monterey County Line.

(9) On Route 152, between the junction with Route 156 at the Don Pacheco "Y" and the intersection with Ferguson Road.

(b) (1) The department shall adopt rules and regulations prescribing uniform standards for warning signs to notify motorists that, pursuant to Section 42010 of the Vehicle Code, increased penalties apply for traffic violations that are committed within Safety Enhancement-Double Fine Zones. The rules and regulations adopted by the department shall include, but not be limited to, a requirement that Safety Enhancement-Double Fine Zones be identified with signs stating: "Special Safety Zone Begins Here" and "Special Safety Zone Ends Here."

(2) The department or local authorities, with respect to highways under their respective jurisdictions, shall place and maintain the warning signs specified in paragraph (1) in areas designated under subdivision (a).

(3) Notwithstanding Section 7550.5 of the Government Code, the department shall report to the Legislature on January 1, 2003, on the results of these pilot projects, including a determination of whether the projects were successful. In its report, the department shall update the January 1, 1998, report, and shall provide a detailed analysis on the impact of the pilot projects on highway safety, including, but not limited to, the number of accidents, traffic injuries, and fatalities in the project areas; and, in consultation with the Department of the California Highway Patrol, recommend specific criteria for designation of a highway as a Safety Enhancement-Double Fine Zone. A determination that the projects were successful shall be based upon a showing that a statistically significant decrease in the number of accidents, traffic injuries, and fatalities has occurred in the project areas.

(c) Designation of a highway as a Safety Enhancement-Double Fine Zone does not increase the civil liability of the state under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code or any other provision of law relating to civil liability.

(d) (1) Only the base fine shall be enhanced pursuant to this section.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

(e) The pilot projects specified in subdivision (a) shall not be elevated in priority for state funding purposes.

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

SEC. 2. Section 42010 of the Vehicle Code is amended to read:

42010. (a) For any offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to subdivision (a) of Section 97 of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of any of the following provisions is an offense that is subject to subdivision (a):

(1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(3) Section 23103, relating to reckless driving.

(4) Section 23104, relating to reckless driving which results in bodily injury to another.

(5) Section 23109, relating to speed contests.

(6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(8) Section 23220, relating to drinking while driving.

(9) Section 23221, relating to drinking in a motor vehicle while on the highway.

(10) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(11) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(12) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(13) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(14) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 of the Streets and Highways Code.

(d) (1) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

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

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.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure, at the earliest possible time, that public safety is protected by enhancing the fines on sections of highways that pose particularly hazardous conditions for unsafe drivers, it is necessary that this act take effect immediately.

CHAPTER 170

An act to amend Sections 19554 and 19556 of the Business and Professions Code, relating to horse racing.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 19554 of the Business and Professions Code is amended to read:

19554. Except as provided elsewhere in this section, the distributing agent for charity distributions shall be a nonprofit organization or corporation, or nonprofit organizations or corporations, selected by the licensee of the meeting and approved by the board.

(a) Each distributing agent to be qualified hereunder shall conform to the then existing laws and regulations of this state and the United States, so as to be exempt or be entitled to exemption from the payment of any tax measured by income.

(b) Each distributing agent shall have not less than five trustees or directors. None of the individuals constituting the governing board of trustees or directors of the distributing agent shall be directly connected with, be a stockholder, or have any interest in the racing association that is the licensee of the race meeting. Each of the individual trustees or directors shall be a person who is, at the time, both a resident of this state, and an executive, officer, director, trustee, or member of the governing body or board, by whatever name the governing body or board may be known, of an organization engaged in civic, religious, charitable, educational, or veteran activities in this state.

(c) Each distributing agent shall adopt bylaws, shall provide for election to fill vacancies in the board of directors or trustees, and shall hold at least one meeting each year.

(d) Notwithstanding any other provision of this section, with the approval of the board, a racing association whose board of trustees or directors is precluded by its articles of incorporation, bylaws, or by contract from receiving compensation for services in the capacity of trustee or director may act as its own distributing agent.

(e) Notwithstanding any other provision of this section, with the approval of the board, a racing association may act as its own distributing agent provided it allocates and distributes for charitable purposes an amount at least equal to that specified in subdivision (b) of Section 19550 in accordance with Section 19555 and subdivision (b) of Section 19556.

SEC. 2. Section 19556 of the Business and Professions Code is amended to read:

19556. (a) The distribution shall be made by the distributing agent to beneficiaries qualified under this article. For the purposes of this article, a beneficiary shall be all of the following:

(1) A nonprofit corporation or organization entitled by law to receive a distribution made by a distributing agent.

(2) Exempt or entitled to an exemption from taxes measured by income imposed by this state and the United States.

(3) Engaged in charitable, benevolent, civic, religious, educational, or veterans' work similar to that of agencies recognized by an organized community chest in the State of California, except that the funds so distributed may be used by the beneficiary for capital expenditures.

(4) Approved by the board.

(b) At least 20 percent of the distribution shall be made to charities associated with the horse racing industry. No beneficiary otherwise qualified under this section to receive charity day net proceeds shall be excluded on the basis that the beneficiary provides charitable benefits to persons connected with the care, training, and running of racehorses, except that type of beneficiary shall make an accounting to the board within one calendar year of the date of receipt of any distribution.

CHAPTER 171

An act to add Section 1748.9 to the Civil Code, relating to credit.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 1748.9 is added to the Civil Code, to read:

1748.9. (a) A credit card issuer that extends credit to a cardholder through the use of a preprinted check or draft shall disclose on the front of an attachment that is affixed by perforation or other means to the preprinted check or draft, in clear and conspicuous language, all of the following information:

(1) That "use of the attached check or draft will constitute a charge against your credit account."

(2) The annual percentage rate and the calculation of finance charges, as required by Section 226.16 of Regulation Z of the Code of Federal Regulations, associated with the use of the attached check or draft.

(3) Whether the finance charges are triggered immediately upon the use of the check or draft.

SEC. 2. This act shall become operative on July 1, 2000.

CHAPTER 172

An act to amend Section 460 of, and to amend, repeal, and add Section 319 of, the Streets and Highways Code, relating to highways.

[Approved by Governor July 23, 1999. Filed with
Secretary of State July 26, 1999.]

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

SECTION 1. 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.

(c) (1) The commission may relinquish to the City of Downey the portion of Route 19 located between Gardendale Street and Telegraph Boulevard within the city, upon terms and conditions the commission finds to be in the best interests of the state.

(2) A relinquishment under this subdivision shall become effective immediately following the commission's approval of the terms and conditions of the relinquishment.

(d) This section shall become inoperative on the effective date of the relinquishment described in subdivision (c) and as of January 1 following that date is repealed.

SEC. 2. Section 319 is added to the Streets and Highways Code, to read:

319. (a) Route 19 is from:

(1) Del Amo Boulevard near Long Beach to Gardendale Street in Downey.

(2) The Downey city limit at Telegraph Boulevard to Route 164 (Galatin Road) near Pico Rivera.

(b) This section shall become operative as of the effective date of the relinquishment by the commission to the City of Downey of the portion of Route 19 located between Gardendale Street and Telegraph Boulevard within the city, pursuant to subdivision (c) of Section 319, as that section read on the day before it was repealed pursuant to the act that added this section during the 1999–2000 Regular Session.

SEC. 3. Section 460 of the Streets and Highways Code is amended to read:

460. (a) Route 160 is from Route 4 near Antioch to Route 51 in Sacramento.

(b) Notwithstanding subdivision (a), upon a determination by the commission that it is in the best interest of the state to do so, the commission may, upon terms and conditions approved by it, relinquish any portion of State Highway Route 160 in Sacramento County from mile post 35.0 to mile post 47.0 to a city in which that segment is located, if the city has agreed to accept the

relinquishment. The relinquishment shall be effective on the date immediately following the date of the commission's approval of the terms and conditions of the relinquishment.

CHAPTER 173

An act to amend Sections 13580.5 and 13580.7 of the Water Code, relating to water.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 13580.5 of the Water Code is amended to read:

13580.5. (a) (1) Subject to subdivision (e) of Section 13580.7, a retail water supplier that receives a request from a customer pursuant to subdivision (c) of Section 13580 shall enter into an agreement to provide recycled water, if recycled water is available, or can be made available, to the retail water supplier for sale to the customer.

(2) Notwithstanding paragraph (1), in accordance with a written agreement between a recycled water producer or a recycled water wholesaler and a retail water supplier, the retail water supplier may delegate to a recycled water producer or a recycled water wholesaler its responsibility under this section to provide recycled water.

(b) A customer may not obtain recycled water from a recycled water producer, a recycled water wholesaler, or a retail water supplier that is not the retailer without the agreement of the retailer.

(c) If either a recycled water producer or a recycled water wholesaler provides a customer of a retail water supplier with a written statement that it can and will provide recycled water to the retailer, the retail water supplier shall, not later than 120 days from the date on which the retail water supplier receives the written statement from the customer, by certified mail, return receipt requested, submit a written offer to the customer. A determination of availability pursuant to Section 13550 is not required.

(d) If the state board pursuant to Section 13550 makes a determination that there is available recycled water to serve a customer of a retail water supplier, the retail water supplier, not later than 120 days from the date on which the retail water supplier receives a copy of that determination from the customer, by certified mail, return receipt requested, shall submit a written offer to the customer.

SEC. 2. Section 13580.7 of the Water Code is amended to read:

13580.7. (a) This section applies only to a retail water supplier that is a public agency.

(b) A customer may request, in writing, a retail water supplier to enter into an agreement or adopt recycled water rates in order to provide recycled water service to the customer. The retail water supplier, by certified mail return receipt requested, shall submit a written offer to the customer not later than 120 days from the date on which the retail water supplier receives the written request from the customer.

(c) If no rate is in effect for recycled water service within the service area of a retail water supplier, the rate and conditions for recycled water service shall be established by contract between the retail water supplier and the customer, not later than 120 days from the date on which the customer requests a contract, or, by resolution or ordinance by the retail water supplier, not later than 120 days from the date on which the retail water supplier receives the customer's written request for an ordinance or resolution.

(d) A rate for recycled water service established by contract, ordinance, or resolution, shall reflect a reasonable relationship between the amount of the rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing recycled water service. Capital costs of facilities required to serve the customer shall be amortized over the economic life of the facility, or the length of time the customer agrees to purchase recycled water, whichever is less. The rate shall not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

(e) The rate for recycled water shall be comparable to, or less than, the retail water supplier's rate for potable water. If recycled water service cannot be provided at a rate comparable to, or less than, the rate for potable water, the retail water supplier is not required to provide the recycled water service, unless the customer agrees to pay a rate that reimburses the retail water supplier for the costs described in subdivision (c).

(f) The offer required by subdivisions (c) and (d) of Section 13580.5 shall identify all of the following:

(1) The source for the recycled water.

(2) The method of conveying the recycled water.

(3) A schedule for delivery of the recycled water.

(4) The terms of service.

(5) The rate for the recycled water, including the per-unit cost for that water.

(6) The costs necessary to provide service and the basis for determining those costs.

(g) This section does not apply to recycled water service rates established before January 1, 1999, or any amendments to those rates.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 174

An act to amend Section 1 of Chapter 1005 of the Statutes of 1982, relating to fairs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 23, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 1 of Chapter 1005 of the Statutes of 1982 is amended to read:

Section 1. The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the Off-Highway Vehicle Fund to the Department of Parks and Recreation and shall be loaned to the 51st District Agricultural Association by the department at the rate of interest earned by funds in the pooled money account. The loan shall be for the purpose of producing an off-highway vehicle fair at the Hungry Valley State Vehicular Recreation Area. Terms and conditions relating to repayment of the loan shall be determined by the Director of Parks and Recreation and shall be approved by the 51st District Agricultural Association.

The 51st District Agricultural Association is hereby authorized to sell the approximately 7.2 acres of land bordered on the south by Le Marsh Street, on the north by Devonshire Street, and on the east by Lindley Avenue. The proceeds of this sale shall be deposited in an interest-bearing trust account and the principal in that account shall be used only for the acquisition of land, or for the lease and improvement of real property, for use as a permanent fairground site, except that if any portion of the loan remains unpaid at the time that interest commences on the account, all interest earned on the account or on any trust deed from the sale shall be applied to the loan repayment until the loan is repaid in full.

Moneys received by the department in repayment of the loan shall be deposited in the Off-Highway Vehicle Fund. Upon repayment of the loan, any revenues of the fair and interest earned from the sale of the property may be used for any authorized activity or purpose of the 51st District Agricultural Association.

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 enable the 51st District Agricultural Association to establish a permanent fairground site at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 175

An act to amend Sections 2357, 2580, and 17200 of, to add Part 18 (commencing with Section 825) to Division 2 of, and to repeal Section 7200 of, the Probate Code, relating to estates and trusts.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Part 18 (commencing with Section 825) is added to Division 2 of the Probate Code, to read:

PART 18. RIGHT TO TRIAL

825. Except as otherwise expressly provided in this code, there is no right to a jury trial in proceedings under this code.

SEC. 2. Section 2357 of the Probate Code is amended to read:

2357. (a) As used in this section:

(1) "Guardian or conservator" includes a temporary guardian of the person or a temporary conservator of the person.

(2) "Ward or conservatee" includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to such medical treatment, the guardian or conservator may petition the court under this section for an order authorizing such medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to such medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(7) The name and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (c) of Section 1510 in a guardianship proceeding or subdivision (b) of Section 1821 in a conservatorship proceeding.

(d) Upon the filing of the petition, unless an attorney is already appointed the court shall appoint the public defender or private counsel under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition and, if that appointment is made, Section 1472 applies.

(e) Notice of the Petition shall be given as follows:

(1) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be personally served on the ward, if 12 years of age or older, or the conservatee, and on the attorney for the ward or conservatee.

(2) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be mailed to the following persons:

(A) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(B) The relatives named in the petition at their addresses stated in the petition.

(f) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take to account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court.

(2) The desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 3. Section 2580 of the Probate Code is amended to read:

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for any purposes, and to any charities, relatives (including the other spouse), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life. A special needs trust for money paid pursuant to a compromise or judgment

for a conservatee may be established only under Chapter 4 (commencing with Section 3600) of Part 8, and not under this article.

(6) Transferring to a trust created by the conservator or conservatee any property unintentionally omitted from the trust.

(7) Exercising options of the conservatee to purchase or exchange securities or other property.

(8) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) Life insurance policies, plans, or benefits.

(ii) Annuity policies, plans, or benefits.

(iii) Mutual fund and other dividend investment plans.

(iv) Retirement, profit-sharing, and employee welfare plans and benefits.

(9) Exercising the right of the conservatee to elect to take under or against a will.

(10) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.

(11) Exercising the right of the conservatee (i) to revoke or modify a revocable trust or (ii) to surrender the right to revoke or modify a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust (i) evidences an intent to reserve the right of revocation or modification exclusively to the conservatee, (ii) provides expressly that a conservator may not revoke or modify the trust, or (iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust.

(12) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

(13) Making a will.

SEC. 4. Section 7200 of the Probate Code is repealed.

SEC. 5. Section 17200 of the Probate Code is amended to read:

17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

(22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment

of a practice administrator for a deceased member shall apply to the petition brought under this section.

(23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

CHAPTER 176

An act to amend Section 411.35 of the Code of Civil Procedure, relating to malpractice actions.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 411.35 of the Code of Civil Procedure is amended to read:

411.35. (a) In every action, including a cross-complaint for damages or indemnity, arising out of the professional negligence of a person holding a valid architect's certificate issued pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, or of a person holding a valid registration as a professional engineer issued pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or a person holding a valid land surveyor's license issued pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code on or before the date of service of the complaint or cross-complaint on any defendant or cross-defendant, the attorney for the plaintiff or cross-complainant shall file and serve the certificate specified by subdivision (b).

(b) A certificate shall be executed by the attorney for the plaintiff or cross-complainant declaring one of the following:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with and received an opinion from at least one architect, professional engineer, or land surveyor who is licensed to practice and practices in this state or any other state , or who teaches at an accredited college or university and is licensed to practice in this state or any other state, in the same discipline as the defendant or cross-defendant and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of this review and consultation that there is reasonable and meritorious cause for

the filing of this action. The person consulted may not be a party to the litigation . The person consulted shall render his or her opinion that the named defendant or cross-defendant was negligent or was not negligent in the performance of the applicable professional services.

(2) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed within 60 days after filing the complaint.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because the attorney had made three separate good faith attempts with three separate architects, professional engineers, or land surveyors to obtain this consultation and none of those contacted would agree to the consultation.

(c) Where a certificate is required pursuant to this section, only one certificate shall be filed, notwithstanding that multiple defendants have been named in the complaint or may be named at a later time.

(d) Where the attorney intends to rely solely on the doctrine of "res ipsa loquitur," as defined in Section 646 of the Evidence Code, or exclusively on a failure to inform of the consequences of a procedure, or both, this section shall be inapplicable. The attorney shall certify upon filing of the complaint that the attorney is solely relying on the doctrines of "res ipsa loquitur" or failure to inform of the consequences of a procedure or both, and for that reason is not filing a certificate required by this section.

(e) For purposes of this section, and subject to Section 912 of the Evidence Code, an attorney who submits a certificate as required by paragraph (1) or (2) of subdivision (b) has a privilege to refuse to disclose the identity of the architect, professional engineer, or land surveyor consulted and the contents of the consultation. The privilege shall also be held by the architect, professional engineer, or land surveyor so consulted. If, however, the attorney makes a claim under paragraph (3) of subdivision (b) that he or she was unable to obtain the required consultation with the architect, professional engineer, or land surveyor, the court may require the attorney to divulge the names of architects, professional engineers, or land surveyors refusing the consultation.

(f) A violation of this section may constitute unprofessional conduct and be grounds for discipline against the attorney, except that the failure to file the certificate required by paragraph (1) of subdivision (b), within 60 days after filing the complaint and certificate provided for by paragraph (2) of subdivision (b), shall not be grounds for discipline against the attorney.

(g) The failure to file a certificate in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(h) Upon the favorable conclusion of the litigation with respect to any party for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the trial court may, upon the motion of a party or upon the court's own motion, verify compliance with this section, by requiring the attorney for the plaintiff or cross-complainant who was required by subdivision (b) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (b) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in an in-camera proceeding at which the moving party shall not be present. If the trial judge finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of the failure to comply with this section.

(i) For purposes of this section, "action" includes a complaint or cross-complaint for equitable indemnity arising out of the rendition of professional services whether or not the complaint or cross-complaint specifically asserts or utilizes the terms "professional negligence" or "negligence."

CHAPTER 177

An act to amend Sections 1646.7, 1646.9, 2079, and 2245 of the Business and Professions Code, relating to outpatient care, and making an appropriation therefor.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 1646.7 of the Business and Professions Code, as amended by Section 1 of Chapter 505 of the Statutes of 1998, is amended to read:

1646.7. (a) A violation of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation.

(b) A violation of any provision of this article or Section 1682 is grounds for suspension or revocation of the physician and surgeon's permit issued pursuant to this article by the Board of Dental Examiners of California. The exclusive enforcement authority

against a physician and surgeon by the Board of Dental Examiners of California shall be to suspend or revoke the permit issued pursuant to this article. The Board of Dental Examiners of California shall refer a violation of this article by a physician and surgeon to the Medical Board of California for its consideration as unprofessional conduct and further action, if deemed necessary by the Medical Board of California, pursuant to Chapter 5 (commencing with Section 2000). A suspension or revocation of a physician and surgeon's permit by the Board of Dental Examiners pursuant to this article shall not constitute a disciplinary proceeding or action for any purpose except to permit the initiation of an investigation or disciplinary action by the Medical Board of California as authorized by Section 2220.5.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Board of Dental Examiners of California shall have all the powers granted therein.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2002, deletes or extends that date.

SEC. 2. Section 1646.7 of the Business and Professions Code, as added by Section 2 of Chapter 505 of the Statutes of 1998, is amended to read:

1646.7. (a) A violation of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) This section shall become operative January 1, 2002.

SEC. 3. Section 1646.9 of the Business and Professions Code is amended to read:

1646.9. (a) Notwithstanding any other provision of law, including, but not limited to, Section 1646.1, a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) may administer general anesthesia in the office of a licensed dentist for dental patients, without regard to whether the dentist possesses a permit issued pursuant to this article, if all of the following conditions are met:

(1) The physician and surgeon possesses a current license in good standing to practice medicine in this state.

(2) The physician and surgeon holds a valid general anesthesia permit issued by the Board of Dental Examiners of California pursuant to subdivision (b).

(b) (1) A physician and surgeon who desires to administer general anesthesia as set forth in subdivision (a) shall apply to the

Board of Dental Examiners of California on an application form prescribed by the board and shall submit all of the following:

(A) The payment of an application fee prescribed by this article.

(B) Evidence satisfactory to the Medical Board of California showing that the applicant has successfully completed a postgraduate residency training program in anesthesiology that is recognized by the American Council on Graduate Medical Education, as set forth in Section 2079.

(C) Documentation demonstrating that all equipment and drugs required by the Board of Dental Examiners of California are possessed by the applicant and shall be available for use in any dental office in which he or she administers general anesthesia.

(D) Information relative to the current membership of the applicant on hospital medical staffs.

(2) Prior to issuance or renewal of a permit pursuant to this section, the Board of Dental Examiners of California may, at its discretion, require an onsite inspection and evaluation of the facility, equipment, personnel, including, but not limited to, the physician and surgeon, and procedures utilized. At least one of the persons evaluating the procedures utilized by the physician and surgeon shall be a licensed physician and surgeon expert in outpatient general anesthesia who has been authorized or retained under contract by the Board of Dental Examiners of California for this purpose.

(3) The permit of any physician and surgeon who has failed an onsite inspection and evaluation shall be automatically suspended 30 days after the date on which the board notifies the physician and surgeon of the failure unless within that time period the physician and surgeon has retaken and passed an onsite inspection and evaluation. Every physician and surgeon issued a permit under this article shall have an onsite inspection and evaluation at least once every six years. Refusal to submit to an inspection shall result in automatic denial or revocation of the permit.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2002, deletes or extends that date.

SEC. 4. Section 2079 of the Business and Professions Code is amended to read:

2079. (a) A physician and surgeon who desires to administer general anesthesia in the office of a dentist pursuant to Section 1646.9 shall provide the Medical Board of California with a copy of the application submitted to the Board of Dental Examiners of California pursuant to subdivision (b) of Section 1646.9 and a fee established by the board not to exceed the costs of processing the application as provided in this section.

(b) The Medical Board of California shall review the information submitted and take action as follows:

(1) Inform the Board of Dental Examiners of California whether the physician and surgeon has a current license in good standing to practice medicine in this state.

(2) Verify whether the applicant has successfully completed a postgraduate residency training program in anesthesiology and whether the program has been recognized by the American Council on Graduate Medical Education.

(3) Inform the Board of Dental Examiners of California whether the Medical Board of California has determined that the applicant has successfully completed the postgraduate residency training program in anesthesiology recognized by the American Council on Graduate Medicine.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2002, deletes or extends that date.

SEC. 5. Section 2245 of the Business and Professions Code is amended to read:

2245. (a) A violation of Article 2.7 (commencing with Section 1646) of Chapter 4 of Division 2 or Section 1682 by a physician and surgeon who possesses a permit issued by the Board of Dental Examiners of California to administer general anesthesia in a dental office may constitute unprofessional conduct.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2002, deletes or extends that date.

CHAPTER 178

An act to amend Section 17072.25 of the Education Code, relating to school facilities.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 17072.25 of the Education Code is amended to read:

17072.25. (a) The board shall adopt regulations to develop a mechanism to rank approved applications for new construction funding. This mechanism shall be used to determine the priority of approved applications when either of the following conditions are met:

(1) The total state funds necessary for funding all approved projects pursuant to this chapter exceed the total state funds in the fund for allocation pursuant to this chapter.

(2) The actual amount of unallocated proceeds of state bonds available on or after July 1, 2000, for new construction for the purposes of this chapter is at three hundred million dollars ($300,000,000).

(b) The ranking mechanism shall allocate priority points based upon the percentages of currently and projected unhoused pupils relative to the total population of the applicant district or attendance area and the total number of currently and projected unhoused pupils in an applicant district or attendance area.

(c) The board may award priority points based on other factors that in its judgment result in the most equitable distribution of resources among applicants. The additional factors may not constitute greater than a 10-percent weight in the overall priority ranking.

CHAPTER 179

An act to amend Section 81149 of the Education Code, relating to community colleges.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 81149 of the Education Code is amended to read:

81149. (a) Notwithstanding any provision of law, a community college district may acquire for use any facility previously used by the United States military and closed as a result of action by the federal Defense Base Closure and Realignment Commission, or purchase any offsite building constructed prior to January 1, 1998 that meets the structural requirements of the 1976 Uniform Building Code, or subsequent additions to that code, but that does not meet the requirements of Section 81130, for use as a school building, as defined in Section 81130.5, if the governing board of the district finds that all of the following conditions have been met:

(1) A structural engineer has inspected the building or facility and submitted a report to the governing board of the community college district that certifies that the building or facility is in substantial compliance with the requirements of this article, or describes in detail any structural modifications necessary to render the building or facility in substantial compliance with the this article. For purposes of this section, substantial compliance with this article means that the building or facility is likely to resist, without catastrophic collapse, earthquake forces generated by major earthquakes of the intensity and severity of the strongest experienced in California, but may

experience some reparable architectural or structural damage. This requirement is satisfied if the structural engineer affixes his or her seal of approval to the report and he or she attests in that report that to the best of his or her knowledge:

(A) He or she has reviewed the design calculations, construction documents, and the local government construction inspection records of the building or facility, to the extent those items are available.

(B) He or she has authorized testing and has observed or reviewed the test results and the inspections of an adequate sample of the structure's welds, anchor bolts, and other structural elements.

(C) He or she has observed that the nonstructural elements, including, but not limited to, light fixtures, heating, and air-conditioning diffusers are adequately braced or anchored.

(2) The governing board of the community college district shall forward the report submitted pursuant to paragraph (1) to the Department of General Services for its review. Within 45 working days, the Department of General Services shall review the report for compliance with the above requirements, to provide feedback to the structural engineer regarding any insufficiencies with the report, and to determine whether or not the building or facility is in substantial compliance with the requirements of this article, or whether any proposed structural modifications will render the structure in substantial compliance with this article. If the Department of General Services does not respond within 45 working days of the submission of the final and complete report, the department will be deemed to have concurred with the structural engineer's report. If structural modifications are necessary to achieve substantial compliance with this article, plans shall be submitted to the department for review and approval. Construction shall be completed in compliance with the continuous inspection requirements of this article.

(b) (1) No member of the governing board of a community college district, and no employee of a community college district, shall be held personally liable for injury to persons or damage to property resulting from the fact that the governing board of the community college district purchased a building or facility pursuant to this subdivision for a school and the building or facility was not constructed pursuant to the requirements of Section 81130.

(2) The exemption from personal liability for members of the governing board and employees of a community college district described in paragraph (1) does not limit the liability of the community college district for injury to persons or damage to property resulting from the fact that the governing board or any employee of the community college district used a building or facility pursuant to this subdivision for a school if the building or facility was not constructed pursuant to the requirements of Section 81130. The exemption from personal liability for members of the governing

board and employees of a community college district described in paragraph (1) does not limit the liability of the community college district, the governing board, or the district's employees pursuant to Section 835 of the Government Code.

(3) Section 81144 is not applicable to a person who, pursuant to this section, purchases a building or facility that meets the requirements of this section but does not meet the requirements of Section 81130. Approval and use of a building or facility pursuant to this section does not violate this article.

CHAPTER 180

An act to amend Section 113870 of the Health and Safety Code, relating to public health.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 113870 of the Health and Safety Code is amended to read:

113870. (a) "Restricted food service transient occupancy establishment" means either of the following:

(1) An establishment of 20 guest rooms or less, that provides overnight transient occupancy accommodations, that serves food only to its registered guests, that serves only a breakfast or similar early morning meal, and no other meals, and with respect to which the price of food is included in the price of the overnight transient occupancy accommodation.

(2) An agricultural homestay establishment that meets all of the following requirements:

(A) Has not more than six guest rooms or accommodates not more than 15 guests.

(B) Provides overnight transient accommodations.

(C) Serves food only to its registered guests and serves meals at any time, and with respect to which the price of food is included in the price of the overnight transient occupancy accommodation.

(D) Lodging and meals are incidental and not the primary function of the agricultural homestay establishment.

(E) The agricultural homestay establishment is located on, and is a part of, a farm, as defined in Section 52262 of the Food and Agricultural Code, that produces agricultural products as its primary source of income.

(b) Notwithstanding subdivision (a), a restricted food service transient occupancy establishment may serve light foods or snacks presented to the guest for self-service.

(c) For purposes of this section, "restricted food service transient occupancy establishment" refers to an establishment as to which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationships as between some occupants and the owner or operator shall be immaterial.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 181

An act to amend Section 35402 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 35402 of the Vehicle Code is amended to read:

35402. (a) Any extension or device, including any adjustable axle added to the front or rear of a vehicle, used to increase the carrying capacity of a vehicle shall be included in measuring the length of a vehicle, except that a drawbar shall not be included in measuring the length of a vehicle but shall be included in measuring the overall length of a combination of vehicles.

(b) Notwithstanding subdivision (a), extensions of not more than 18 inches in length on each end of a vehicle or combination of vehicles used exclusively to transport vehicles shall not be included in measuring the length of a vehicle or combination of vehicles when the vehicles are loaded.

(c) Notwithstanding subdivision (a), extensions of not more than 18 inches in length on the front of the first trailer and the rear of the last vehicle in a combination of vehicles transporting loads shall not be included in measuring the length of a vehicle or combination of vehicles when the vehicles are loaded and are on highways, other than those highways designated by the United States Department of Transportation as national network routes.

(d) Notwithstanding subdivision (a), any extension or device which is not used to carry any load and which does not exceed three feet in length, added to the rear of a vehicle, and is used exclusively for pushing the vehicle or a combination of vehicles, which vehicle or combination of vehicles is designed and used exclusively to transport earth, sand, gravel, and similar materials, shall be included in measuring the length of the vehicle but shall not be included in measuring the overall length of the combination of vehicles.

(e) Notwithstanding subdivision (a), a truck semitrailer combination, but not a truck tractor and semitrailer combination, may use a sliding fifth wheel, or a truck tractor, semitrailer, trailer, and a truck-trailer combination may use a sliding drawbar, to extend the length of the combination by not more than 2 feet 6 inches while traveling 35 miles per hour or less on any highway, except a freeway. These provisions shall apply, however, to freeway onramps and offramps and freeway connectors. The sliding fifth wheel or drawbar when extended shall not be included in measuring the overall length of the combination of vehicles if the pivot point of the semitrailer connection is more than two feet to the rear of the center of the rearmost axle of the motortruck or if the distance from the pivot point to the center of the rearmost axle of the semitrailer does not exceed 34 feet.

Combinations of vehicles permitted by this subdivision shall be in compliance with the weight limits provided in Article 1 (commencing with Section 35550) of Chapter 5 whenever any drawbar or sliding fifth wheel is extended, contracted, or in any intermediate position as provided for by this subdivision.

CHAPTER 182

An act to amend Section 33213 of the Public Resources Code, relating to the Santa Monica Mountains Conservancy.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 33213 of the Public Resources Code is amended to read:

33213. (a) The Santa Monica Mountains Conservancy Advisory Committee is hereby created. The advisory committee consists of 23 members, as follows:

(1) Twelve representatives of local governments from jurisdictions including the Santa Monica Mountains, one of whom shall be appointed by the Mayor of the City of Los Angeles, one of whom shall be appointed by the Board of Supervisors of the County of Los Angeles, one of whom shall be appointed by the City Council of the City of Thousand Oaks, one of whom shall be appointed by the Board of Supervisors of the County of Ventura, one of whom shall be appointed by the City Council of the City of Agoura Hills, one of whom shall be appointed by the City Council of the City of Westlake Village, one of whom shall be appointed by the City Council of the City of Malibu, one of whom shall be appointed by the City Council of the City of Calabasas, one of whom shall be appointed by the City Council of Burbank, one of whom shall be appointed by the City Council of Glendale, one of whom shall be appointed by the City Council of La Canada-Flintridge, and one of whom shall be appointed by the City Council of Pasadena.

(2) Six public members, two of whom shall be appointed by the Governor, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(3) One representative of the Rancho Simi Recreation and Park District, to be appointed by the district board of directors.

(4) One representative of the Conejo Recreation and Park District, to be appointed by the district board of directors.

(5) One representative of the Pleasant Valley Recreation and Park District, to be appointed by the district board of directors.

(6) One representative of the City of Santa Clarita, to be appointed by the city council.

(7) One representative of the City of Moorpark, to be appointed by the city council.

(b) The appointing powers shall make every effort to ensure that the ethnic and racial composition of the advisory committee reflects the racial and ethnic composition of the population of the state.

(c) The advisory committee shall select from among its members a chairperson and a vice chairperson.

(d) The members of the advisory committee shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(e) The advisory committee has the following duties:

(1) Propose and review projects for conservancy action and report to the conservancy regarding the conformity of the projects with the plan.

(2) Review proposed amendments to the plan.

(3) Provide opportunities for public participation.

(f) Twelve members of the advisory committee shall constitute a quorum for the transaction of any business of the advisory committee.

CHAPTER 183

An act to add Section 11580.011 to the Insurance Code, and to amend Section 16054 of the Vehicle Code, relating to automobile insurance.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 11580.011 is added to the Insurance Code, to read:

11580.011. (a) As used in this section, "child passenger restraint system" means a system as described in Section 27360 of the Vehicle Code.

(b) Every policy of automobile liability insurance, as described in Section 16054 of the Vehicle Code, shall provide liability coverage for replacement of a child passenger restraint system that was in use by a child during an accident for which liability coverage under the policy is applicable due to the liability of an insured.

(c) Every policy of automobile liability insurance that provides uninsured motorist property damage coverage, as described in paragraph (2) of subdivision (a) of Section 11580.26, shall provide coverage for replacement of a child passenger restraint system that was in use by a child during an accident for which uninsured motorist property damage coverage under the policy is applicable due to the liability of an uninsured motorist.

(d) Every policy that provides automobile collision coverage or automobile physical damage coverage, as described in Section 660, shall include a child passenger restraint system within the definition of covered property, if the child passenger restraint system was in use by a child during an accident.

SEC. 2. Section 16054 of the Vehicle Code is amended to read:

16054. (a) Proof may be established by filing with the department satisfactory evidence:

(1) That the owner had an automobile liability policy, a motor vehicle liability policy, or bond in effect at the time of the accident with respect to the driver or the motor vehicle involved in the accident, unless it is established that at the time of the accident the motor vehicle was being operated without the owner's permission, express or implied, or was parked by a driver who had been operating the vehicle without permission.

(2) That the driver of the motor vehicle involved in the accident, if he or she was not the owner of the motor vehicle, had in effect at the time of the accident an automobile liability policy or bond with respect to his or her operation of the motor vehicle not owned by him or her.

(3) That the liability as may arise from the driver's operation of the motor vehicle involved in the accident is, in the judgment of the department, covered by some form of liability insurance or bond.

(4) That the owner or driver, if he or she is involved in an accident while operating a vehicle of less than four wheels, had in effect at the time of the accident with respect to the driver or vehicle a liability policy or bond that meets the requirements of Section 16056.

(b) Any automobile liability policy or bond referred to in this section shall comply with the requirements of Section 16056 and Sections 11580, 11580.011, 11580.1, and 11580.2 of the Insurance Code, but need not contain provisions other than those required by those sections, and shall not be governed by Chapter 3 (commencing with Section 16430).

CHAPTER 184

An act to amend Section 96.6 of the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 96.6 of the Revenue and Taxation Code is amended to read:

96.6. (a) Notwithstanding any other provision of law, for the purposes of this chapter, the apportionment of property tax revenues required by Article 1 (commencing with Section 95) to Article 4 (commencing with Section 98), inclusive, shall not involve the subtraction of the redevelopment increment, calculated pursuant to subdivision (b) of Section 33670 of the Health and Safety Code, from any jurisdiction that is not within the boundaries of a redevelopment project area. For each fiscal year, if, in performing the calculations set forth in subdivision (a) and in subdivision (b) of Section 33670 of the Health and Safety Code, the auditor determines that there is redevelopment increment to be allocated to a redevelopment agency, the auditor shall withdraw that redevelopment increment determined pursuant to Section 33670 of the Health and Safety Code from those ad valorem property tax revenue allocations to be made to each jurisdiction within the boundaries of the relevant redevelopment project area. Each of those jurisdiction's share of that

redevelopment increment shall be computed on the basis of the factors or rates which are developed pursuant to Section 96.5. In order to determine each jurisdiction's share of that redevelopment increment, the factors or rates for all tax rate areas that are part of a redevelopment project shall be applied to the current assessed value of the taxable property within the redevelopment project area, less the assessed valuation on the assessment roll last equalized prior to the effective date of the ordinance establishing the redevelopment project. Nothing in this section shall be construed as prohibiting a county from making the allocation and payment of funds as provided for by subdivision (b) of Section 33670 of the Health and Safety Code prior to the apportionment of property tax revenues to any jurisdiction.

(b) The amendment of subdivision (a) made by the act adding this subdivision does not constitute a change in, but is declaratory of, existing law. However, any apportionment of property tax revenues made prior to the effective date of the act adding this subdivision that is inconsistent with the provisions of subdivision (a), as amended by the act adding this subdivision, shall be deemed correct.

CHAPTER 185

An act to amend Section 6439 of the Fish and Game Code, relating to aquatic species, and making an appropriation therefor.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 6439 of the Fish and Game Code is amended to read:

6439. This article shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends that date.

SEC. 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.

CHAPTER 186

An act to amend Section 1749.3 of the Insurance Code, relating to insurance.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 1749.3 of the Insurance Code is amended to read:

1749.3. An individual licensed as either a life agent or a fire and casualty broker-agent, but not as both, shall complete those courses, programs of instruction, or seminars approved by the commissioner for the type of license held. The minimum number of hours required is as follows:

(a) During each of the first four 12-month periods following the date of the original license issuance, a minimum of 25 hours.

(b) Any licensee who has held a license prior to the effective date of this section, or who has complied with subdivision (a), shall satisfactorily complete 30 hours of instruction prior to renewal of the license. These hours of instruction may be completed at any time prior to renewal of the license.

(c) An individual licensed as both a fire and casualty broker-agent and as a life agent shall satisfy the requirements of this section by demonstrating completion of the courses, programs of instruction, or seminars approved by the commissioner for either license.

(d) Any life agent who wishes to sell 24-hour care coverage, as defined in Section 1749.02, shall complete a course, program of instruction, or seminar of an approved continuing education provider on workers' compensation and general principles of employer liability, which shall be completed by examination approved by the commissioner as part of the continuing education course, program of instruction, or seminar prior to selling this coverage. The required number of instruction hours shall be equal to but no greater than that required by the curriculum board for the prelicensing requirements of a fire and casualty broker-agent on these subjects. This requirement shall be part of, and not in addition to, the continuing education requirement of this section. Nothing in this section shall be deemed to allow a life agent to satisfy the obligations set forth in this section by other than a proctored examination administered or approved by the department.

(e) A licensee shall not be required to comply with the requirements of this article if the licensee submits proof satisfactory to the commissioner that he or she has been a licensee in good

standing for 30 continuous years in this state and is 70 years of age or older.

CHAPTER 187

An act to amend Sections 12383 and 12394 of the Insurance Code, relating to title insurance.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. Section 12383 of the Insurance Code is amended to read:

12383. All amounts set aside in the unearned premium reserve of a title insurer shall be held either as cash on hand or shall be deposited or invested in those investments suitable for the investment of trust funds, as provided in Section 16040 of the Probate Code.

SEC. 2. Section 12394 of the Insurance Code is amended to read:

12394. A title insurer, as to its title insurance department, shall be subject to and shall comply with all the requirements of the insurance laws and the rules and regulations of the commissioner. It may invest its assets apportioned to its title insurance department, and the accumulations therefrom, in the manner in which the assets of title insurers are allowed by the laws of this state to be invested.

CHAPTER 188

An act relating to the DeLaveaga Park Property.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. It is the intent of the Legislature by this act to honor the state's contractual obligations with regard to the DeLaveaga Park Property in the City of Santa Cruz, as described in Exhibit A attached to a decree issued May 27, 1898, by the Superior Court for the City and County of San Francisco.

SEC. 2. (a) All real property within the DeLaveaga Park Property owned in fee by the State of California, other than that portion currently leased to the City of Santa Cruz, shall be used by the state exclusively for a camp of instruction for the National Guard.

If, however, the Adjutant General determines that the real property, within the foreseeable future, will no longer be necessary for a National Guard camp of instruction and notifies the Department of General Services of that determination, the Department of General Services shall, within 180 days of that notification, convey the real property in fee to the city, subject only to the condition that the real property be used by the city in perpetuity for public recreational purposes, and for no other compensation or consideration.

(b) Notwithstanding any other provision of law that limits reversionary rights to real property, including, but not necessarily limited to, Chapter 5 (commencing with Section 885.010) of Title 5 of Part 2 of Division 2 of the Civil Code, title to the property described in subdivision (a) shall revert to the possession, control, and ownership of the state if any of the conditions for the use of that real property are violated. If the property is conveyed to the City of Santa Cruz, any conditions for the use of that property prescribed in subdivision (a) shall be incorporated in the instrument conveying the property to the City of Santa Cruz.

SEC. 3. (a) The Department of General Services is hereby directed, within 180 days of the effective date of this act, to convey to the City of Santa Cruz, in accordance with the June 27, 1967, Lease Exchange Agreement between the state and the City of Santa Cruz, its fee interest in that portion of the DeLaveaga Park Property that the state is currently leasing to the city, comprising approximately 83 acres, and which the city is currently using as part of the DeLaveaga Golf Course, if, in accordance with that agreement, the city simultaneously conveys in fee to the State of California that portion of the DeLaveaga Park Property that the city is currently leasing to the State of California pursuant to the lease exchange agreement, comprising approximately 98 acres of the "upper portion" of the DeLaveaga Park Property, to be used by the state for public recreational purposes. The state's conveyance to the city shall be conditioned upon the real property being used as a municipally owned public golf course for as long as the city determines and thereafter used, in perpetuity, as a municipally owned public recreational area.

(b) Notwithstanding any other provision of law that limits reversionary rights to real property, including, but not necessarily limited to, Chapter 5 (commencing with Section 885.010) of Title 5 of Part 2 of Division 2 of the Civil Code, title to the property described in subdivision (a) shall revert to the possession, control, and ownership of the state if any of the conditions for the use of that real property are violated. If the property is conveyed to the City of Santa Cruz, any conditions for the use of that property prescribed in subdivision (a) shall be incorporated in the instrument conveying the property to the City of Santa Cruz.

———

CHAPTER 189

An act to add Section 35041.3 to the Education Code, relating to the selective service.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 26, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Under federal law, a young man is required to register with the Selective Service pursuant to the federal Military Selective Service Act (50 U.S.C. App. 451 et seq.) within 30 days of his 18th birthday.

(b) Under federal law, failure to register is a felony punishable by a fine of up to two hundred fifty thousand dollars ($250,000), imprisonment for up to five years, or both the fine and imprisonment.

(c) Under federal law, registration with the Selective Service is a condition of eligibility for federal student loans and federal job training.

(d) Under California law, registration is required for a student to be eligible for state student financial aid and for appointment to many state and local government jobs.

(e) Every effort must be made to ensure that young men are aware of, and fulfill, their obligation to register for the Selective Service.

SEC. 2. Section 35041.3 is added to the Education Code, to read:

35041.3. (a) A governing board of a school district should, but is not required to, make every reasonable effort to appoint a selective service registrar for each high school. The selective service registrar may be an employee of the high school where he or she is appointed or a school volunteer who is 18 years of age or older. The duty of the selective service registrar is to help pupils subject to the federal Military Selective Service Act (50 U.S.C. App. 451 et seq.) enrolled in the high school register in accordance with that act.

(b) A school district should, but is not required to, make every reasonable effort to inform pupils enrolled with the district who are subject to the federal Military Selective Service Act (50 U.S.C. App. 451 et seq.) of all of the following:

(1) The importance of meeting one's Selective Service obligations.

(2) The consequences of not registering as required under the federal Military Selective Service Act.

(3) How to register with the Selective Service.

CHAPTER 190

An act to add Section 4009 to the Business and Professions Code, to add Section 1186 to the Labor Code, and to add Section 14105.337 to the Welfare and Institutions Code, relating to pharmacists.

[Approved by Governor July 26, 1999. Filed with Secretary of State July 27, 1999.]

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

SECTION 1. Section 4009 is added to the Business and Professions Code, to read:

4009. The board may not adopt or amend any rule or regulation that thereby would conflict with Section 1186 of the Labor Code.

SEC. 2. Section 1186 is added to the Labor Code, to read:

1186. A person employed in the practice of pharmacy is not exempt from coverage under any provision of the orders of the Industrial Welfare Commission unless he or she individually meets the criteria established for exemption as executive or administrative employees. No person employed in the practice of pharmacy may be subject to any exemption from coverage under the orders of the Industrial Welfare Commission established for professional employees.

SEC. 3. Section 14105.337 is added to the Welfare and Institutions Code, to read:

14105.337. (a) Effective January 1, 2000, the department shall increase reimbursement to pharmacists by twenty-five cents ($0.25) per prescription for all drug prescription claims reimbursed through the Medi-Cal program.

(b) Effective July 1, 2002, the department shall increase reimbursement to pharmacists by an additional fifteen cents ($0.15) per prescription for all drug prescription claims reimbursed through the Medi-Cal program.

CHAPTER 191

An act to amend Section 42285.3 of the Education Code, relating to school finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 42285.3 of the Education Code is amended to read:

42285.3. (a) Notwithstanding subdivision (b) of Section 42280 or any other provision of law, a unified school district that is the only school district in a county, that has received more than two million seven hundred thousand dollars ($2,700,000) in federal Forest Reserve funds in the 1992–93 school year and less than one million three hundred thousand dollars ($1,300,000) in federal Forest Reserve funds in the 1996–97 school year, and that has fewer than 4,501 units of average daily attendance in the 1997–98 school year or in subsequent school years shall be eligible to receive apportionments pursuant to the schedules for a "necessary small school" and a "necessary small high school," as set forth in this article, for up to the total number of schools in the district that would have met the criteria for classification as a necessary small school or a necessary small high school in the 1996–97 fiscal year, if the district had fewer than 2,501 units of average daily attendance in the 1996–97 fiscal year, except that this section shall not apply in any school year in which an otherwise eligible school district receives more than two million dollars ($2,000,000) in federal Forest Reserve funds.

(b) A school district that receives apportionments pursuant to the schedules for a necessary small school and a necessary small high school under subdivision (a) shall report to the State Department of Education and the Department of Finance by July 1, 2001, concerning the district's plan to address the district's need for additional funding when this section is repealed.

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

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To provide needed funding to enable necessary small school and necessary small high schools to continue educating pupils, it is necessary for this act to take effect immediately.

CHAPTER 192

An act to add and repeal Section 130021 of the Health and Safety Code, relating to hospital facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 27, 1999. Filed with
Secretary of State July 28, 1999.]

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

SECTION 1. Section 130021 is added to the Health and Safety Code to read:

130021. (a) All regulatory submissions to the California Building Standards Commission made by the office pursuant to this article and Article 9 (commencing with Section 130050) shall be deemed to be emergency regulations and shall be adopted as such.

(b) 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. 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 that regulations relating to seismic safety in hospitals take effect at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 193

An act relating to parks and recreation.

[Approved by Governor July 27, 1999. Filed with
Secretary of State July 28, 1999.]

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 California is a rich and enduring tapestry woven with the threads of many remarkable lives, cultures, and events.

(b) The lives, work, and artistry of Chinese Americans have added strength, vitality, and purpose to that tapestry.

(c) Chinese Americans constitute one of the fastest growing populations in the nation, with the majority of Chinese Americans making their home in this state with large numbers in southern California.

(d) In order to educate the general public while preserving American history and culture from the unique perspective of the generations of Chinese Americans who have contributed to our national fabric, the Museum of Chinese American History was established.

(e) The Museum of Chinese American History was formed as a nonprofit organization in 1989 and the museum will officially open to the public at its permanent site in the El Pueblo de Los Angeles Historic Monument in Los Angeles in the year 2000, the Sesquicentennial of California's statehood.

(f) The Museum of Chinese American History has already firmly established itself as a significant cultural educational resource for Chinese Americans and the multicultural communities in this state and the nation, hosting numerous exhibitions and events and conducting research projects.

(g) Through the work of the museum, precious Chinese American traditions and folklore, moving oral histories, records of painful obstacles overcome, and hard fought successes are being preserved and safeguarded 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 of Chinese American History also serves as an educational and resource center for the exchange of ideas and experiences related to life in multiethnic and multicultural America and as a vital force in bridging communities and generations of different cultural backgrounds.

The Museum of Chinese American History and Friends of the Museum of Chinese American History are working in partnership with the City of Los Angeles and the private sector to secure funding in order to develop and maintain a permanent facility for the museum center.

SEC. 2. It is the intent of the Legislature that the Museum of Chinese American History shall not become a financial burden to the State of California, and therefore, that any maintenance or repair costs incurred by the museum shall be the responsibility of the Friends of the Museum of Chinese American History.

SEC. 3. State funding for the rehabilitation, development, and operations for the permanent site of the Museum of Chinese American History in Los Angeles is contingent upon funding provided in the Budget Act of 1999.

SEC. 4. The Legislature hereby finds and declares all of the following:

(a) Italian Americans have played an important role in the social and economic development of California.

(b) The history of Italian Americans in Los Angeles can be traced back to 1823.

(c) The historic Italian Hall was built in 1907 and has served as the center of the Italian community for over a century.

(d) The Italian Hall has been vital in educating the public about Italian American history and preserving Italian culture.

(e) Through social gatherings and community events the Italian Hall has successfully educated the public about the contributions of

Italians and preserved Italian culture and history for the public and generations to come.

(f) The Italian Hall is working in partnership with the City of Los Angeles and the private sector to secure funding for the restoration of the historic hall.

SEC. 5. Funding for a grant for the restoration of the Italian Hall in Los Angeles is contingent upon funding provided in the Budget Act of 1999.

CHAPTER 194

An act to amend Section 1012 of, and to add Section 1012.4 to, the Military and Veterans Code, relating to veterans.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. It is the intent of the Legislature that any agreement entered into between the California Department of Veterans Affairs and the United States Department of Veterans Affairs, as authorized under Section 1012.4 of the Military and Veterans Code, as added by this act, should not result in increased net costs for the state.

SEC. 2. Section 1012 of the Military and Veterans Code is amended to read:

1012. (a) Except as provided in Section 1012.4, the home is for aged and disabled persons who served in the armed forces of the United States, who were discharged or released from active duty under honorable conditions from service, who are eligible for hospitalization or domiciliary care in a veterans' facility in accordance with the rules and regulations of the United States Department of Veterans Affairs, and who are bona fide residents of this state at the time of application; and for the spouses of these persons if all of the following conditions are satisfied:

(1) Space is available.

(2) Joint residency will be in the best interests of the home member, as determined by the administrator.

(3) The spouse is a bona fide resident of this state at the time of application for admission to the home and is married to, and has resided with, the home member for at least one year.

(4) The home member and spouse agree to pay the fees and charges for joint residency which the administrator may establish.

(b) Veterans who qualify for benefits under this chapter due to service during a time of war, shall be given priority over veterans who qualify due to service during a time of peace.

(c) A resident spouse may continue residence after the veteran's death.

(d) The property of the home shall be used for this purpose.

SEC. 3. Section 1012.4 is added to the Military and Veterans Code, to read:

1012.4. Notwithstanding Section 1012, the department may arrange by contract or any other form of agreement with the United States Department of Veterans Affairs to do both of the following:

(a) Authorize veterans, collateral dependents, and other beneficiaries authorized by the United States Department of Veterans Affairs, who are not residents of the Veterans' Home of California, Yountville, to receive outpatient medical services at that home.

(b) Establish rates for reimbursement from the federal government to the State of California for outpatient services rendered by the Veterans' Home of California, Yountville to veterans who are authorized under subdivision (a).

(c) The outpatient services and reimbursement procedures authorized under subdivisions (a) and (b) may be established for the veterans' home located in Barstow, California, and any veterans' home constructed within the state on or after January 1, 2000.

CHAPTER 195

An act relating to minors.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. The Division of Labor Standards Enforcement of the Department of Industrial Relations shall review existing restrictions under federal and state law related to the participation of minors between 16 and 18 years of age and minors under the age of 16 years in construction projects. The goal of the review shall be to ascertain whether certain types of construction work could be performed by minors volunteering for nonprofit religious, civic, or youth organizations and under what conditions, if any, that work could be performed without jeopardizing their safety. The division shall consult with appropriate nonprofit religious, civic, and youth organizations and organized labor unions. The division shall report its findings to the Legislature not later than April 1, 2000.

CHAPTER 196

An act to amend Section 18501 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 18501 of the Revenue and Taxation Code is amended to read:

18501. (a) Every individual taxable under Part 10 (commencing with Section 17001) shall make a return to the Franchise Tax Board, stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable, if the individual has any of the following for the taxable year:

(1) An adjusted gross income from all sources in excess of eight thousand dollars ($8,000), if single.

(2) An adjusted gross income from all sources in excess of sixteen thousand dollars ($16,000), if married.

(3) A gross income from all sources in excess of ten thousand dollars ($10,000), if single, and twenty thousand dollars ($20,000), if married, regardless of the amount of adjusted gross income.

(4) In the case of an individual described in Section 63(c)(5) of the Internal Revenue Code, relating to limitation on basic standard deduction in the case of certain dependents, a gross income from all sources that exceeds the amount of the standard deduction allowed under that section.

(b) If a husband and wife have for the taxable year an adjusted gross income from all sources in excess of sixteen thousand dollars ($16,000) or a gross income from all sources in excess of twenty thousand dollars ($20,000), each shall make a return or the income of each shall be included on a single joint return as otherwise provided in this article.

(c) For any individual described in paragraph (1) or (2), the Franchise Tax Board shall recompute the amounts provided in subdivision (b) and paragraphs (1) to (3), inclusive, of subdivision (a) as follows:

(1) For any individual eligible to claim the credit described in subdivision (c) of Section 17054, the Franchise Tax Board shall increase the income amounts described in subdivision (b) and paragraphs (1) to (3), inclusive, of subdivision (a), as adjusted by subdivision (d), by the quotient provided by dividing the credit described in subdivision (c) of Section 17054, as adjusted in subdivision (i) of Section 17054, by 2 percent.

(2) For any individual or married couple eligible to claim the credit described in subdivision (d) of Section 17054, the Franchise

Tax Board shall increase the income amounts described in subdivision (b) or paragraphs (1) to (3), inclusive, of subdivision (a), as adjusted by subdivision (d), by the quotient provided by dividing each credit described in subdivision (d) of Section 17054, as adjusted in subdivision (i) of Section 17054, by the following:

(A) If the individual or married couple is not eligible to claim the credit allowed in subdivision (c) of Section 17054, 3 percent for the first dependent credit and 4 percent for the second dependent credit, if any.

(B) If the individual or married couple is eligible to claim the credit allowed in subdivision (c) of Section 17054, 4 percent for the first dependent credit and 5 percent for the second dependent credit, if any.

(d) For each taxable year beginning on or after January 1, 1996, the Franchise Tax Board shall recompute the income amounts prescribed in paragraphs (1) to (3), inclusive, of subdivision (a) and in subdivision (b), as follows:

(1) The Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the income amounts for the preceding taxable year by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

(e) The changes to subdivision (c) made by the act adding this subdivision shall apply to each taxable year beginning on or after January 1, 1999.

CHAPTER 197

An act to amend Sections 27571 and 27644 of, and to add Sections 27522 and 27523 to, the Food and Agricultural Code, and to amend Section 113997 of the Health and Safety Code, relating to agriculture.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 27522 is added to the Food and Agricultural Code, to read:

27522. "Eggs that are packaged for export" means those eggs destined for conveyance to any location outside the United States or its territories.

SEC. 2. Section 27523 is added to the Food and Agricultural Code, to read:

27523. "Eggs that are packaged for interstate commerce" means those eggs destined for sale outside the state.

SEC. 3. Section 27571 of the Food and Agricultural Code is amended to read:

27571. (a) The secretary shall appoint a Shell Egg Advisory Committee consisting of seven members, six of whom shall be selected by the secretary from egg handlers and be representative of the egg industry. The secretary shall appoint two alternates who may serve in the absence of any of the six egg handler representatives. The California Agricultural Commissioners Association shall annually designate one of its members who shall serve in a nonvoting capacity as the seventh member of the committee. The secretary may appoint one additional member on the committee, who shall be a public member. The members of the committee shall receive no salary.

(b) Upon the secretary's request, the committee shall submit to the secretary the names of three or more natural persons, each of whom shall be a citizen and resident of this state and not a producer, shipper, or processor nor financially interested in any producer, shipper, or processor, for appointment by the secretary as a public member of the committee. The secretary may appoint one of the nominees as the public member on the committee. If all nominees are unsatisfactory to the secretary, the committee shall continue to submit lists of nominees until the secretary has made a selection. Any vacancy in the office of the public member of the committee shall be filled by appointment by the secretary from the nominee or nominees similarly qualified submitted by the committee. The public member of the committee shall represent the interests of the general public in all matters coming before the committee and shall have the same voting and other rights and immunities as other members of the committee.

SEC. 4. Section 27644 of the Food and Agricultural Code is amended to read:

27644. (a) It is unlawful for an egg handler, as defined in Section 27510, to sell, offer for sale, or expose for sale eggs that are packed or graded for human consumption unless at least one of the following conditions is met:

(1) The consumer container is plainly, legibly, and conspicuously labeled "KEEP REFRIGERATED" or with words of similar meaning.

(2) A conspicuous sign is posted at the point of sale for eggs on bulk display advising consumers that the eggs are to be refrigerated as soon as practical after purchase.

(b) Except as provided in subdivision (c), it is unlawful for an egg handler to sell, offer for sale, or expose for sale eggs that are packed for human consumption unless each container intended for sale to the ultimate consumer is labeled on one outside top, side, or end with all of the following:

(1) (A) The words "Sell-by" immediately followed by the month and day in bold type, for example "June 30" or "6-30." Common abbreviations of months shall be permitted.

(B) The sell-by date shall not exceed 30 days from the date on which the eggs were packed, excluding the date of packing.

(C) If the eggs are repacked but not regraded, the original sell-by date shall apply.

(2) A Julian pack date. As used in this paragraph, the Julian pack date is the consecutive day of the year on which the eggs were packed.

(3) The identification number of the plant of origin.

(c) This section does not apply to eggs that are packaged for export. Paragraph (1) of subdivision (b) does not apply to eggs that are packaged for interstate commerce or eggs that are packaged for military sales.

(d) All eggs returned from grocery stores, store warehouses, and institutions shall not be reprocessed for retail shell egg sales.

(e) (1) For the purposes of paragraph (3) of subdivision (b), the department, in consultation with the Shell Egg Advisory Committee, shall establish a plant identification numbering system and assign identification numbers to all egg handling facilities.

(2) For the purposes of complying with paragraph (3) of subdivision (b), an egg handling facility that is inspected by the United States Department of Agriculture, and to which a federal plant identification number has been assigned, may use the federal identification number, the identification number assigned by the department, or both.

SEC. 5. Section 113997 of the Health and Safety Code is amended to read:

113997. (a) Commencing January 1, 1998, raw shell eggs shall be stored and displayed at an ambient temperature of 7 degrees Celsius (45 degrees Fahrenheit) or below.

(b) Notwithstanding subdivision (a), raw shell eggs may be stored and displayed unrefrigerated if all of the following conditions are met:

(1) Not more than four days have elapsed from the date of pack.

(2) The eggs were not previously refrigerated.

(3) The eggs are not stored or displayed at an ambient temperature above 32 degrees Celsius (90 degrees Fahrenheit).

(4) Retail egg containers are prominently labeled "REFRIGERATE AFTER PURCHASE" or a conspicuous sign is posted advising consumers that these eggs are to be refrigerated as soon as practical after purchase.

(5) Retail egg containers are conspicuously identified with the date of the pack.

(6) Any eggs that are unsold after four days from the date of the pack shall be stored and displayed pursuant to subdivision (a), diverted to pasteurization, or destroyed in a manner approved by the enforcement agency.

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.

CHAPTER 198

An act to amend Sections 55484.75 , 55523, 55862, 56183.5, 56185.75, and 56572 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 55484.75 of the Food and Agricultural Code is amended to read:

55484.75. (a) If an application for a license indicates, or the department determines during the application review process, that the applicant was issued a license that was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for the purposes of this chapter, or any other provision of law.

(b) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license and the application was denied within the last year, the department shall cease further review of the application until 30 days have elapsed from the date of the notification of the denial or from the effective date of the decision and order of the department upholding a denial. The cessation of review shall not constitute a denial of the new applicant for purposes of this chapter, or any other provision of law.

(c) Nothing in subdivision (a) or (b) prohibits the department from taking into account the basis for denial or revocation in

considering any new application subsequent to the elapse of the applicable period of prohibition.

SEC. 2. Section 55523 of the Food and Agricultural Code is amended to read:

55523. (a) Each application shall state all of the following:

(1) The full name of the applicant.

(2) If the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation.

(3) The principal business address of the applicant in this state.

(4) The name of every person who is authorized to receive and accept service of summons for the applicant.

(5) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:

(A) The applicant's files with credit reporting agencies.

(B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.

(6) A notice signed by the applicant that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete the application within 60 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents, is a misdemeanor.

SEC. 3. Section 55862 of the Food and Agricultural Code is amended to read:

55862. (a) (1) If any processor does not apply for the renewal of a preexisting license on or before the date of expiration of the license, a penalty of twenty-five dollars ($25) shall be added to the fee provided for under Section 55861 or 55861.5. That penalty shall be paid within 30 days immediately following the license expiration date . Payment of the penalty shall entitle the applicant to 60 days from the date of the penalty payment to complete the application. If the application is not completed within that time, the application shall be denied and all fees retained by the department.

(2) If the penalty described in paragraph (1) is not paid within the 30-day period, any application for renewal of a preexisting license shall be treated as a new application.

(b) A new applicant shall have 60 days from the date of filing the application form and payment of the fee to complete the application. After the 60-day period has elapsed, if the application remains incomplete, the application may be denied and the application fee may be retained by the department.

SEC. 4. Section 56183.5 of the Food and Agricultural Code is amended to read:

56183.5. (a) An initial application, at a minimum, shall include the following:

(1) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:

(A) The applicant's files with credit reporting agencies.

(B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.

(2) A notice signed by the applicant that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete it within 60 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents is a misdemeanor.

(c) The department shall adopt regulations that specify the proper and necessary information and supporting documentation the department requires for an application to be considered complete.

SEC. 5. Section 56185.75 of the Food and Agricultural Code is amended to read:

56185.75. (a) If an application for a license indicates, or the department determines during the application review process, that the applicant was issued a license that was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the

application for the purposes of this chapter, or any other provision of law.

(b) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license and the application was denied within the last year, the department shall cease further review of the application until 30 days have elapsed from the date of the notification of the denial or from the effective date of the decision and order of the department upholding a denial. The cessation of review shall not constitute a denial of the new applicant for purposes of this chapter, or any other provision of law.

(c) Nothing in subdivision (a) or (b) prohibits the department from taking into account the basis for denial or revocation in considering any new application subsequent to the elapse of the applicable period of prohibition.

SEC. 6. Section 56572 of the Food and Agricultural Code is amended to read:

56572. (a) (1) If any licensee does not apply for the renewal of a preexisting license on or before the date of the expiration of the license, a penalty of twenty-five dollars ($25) shall be added to the fee provided for under Section 56571 or 56571.5. That penalty shall be paid within 30 days immediately following the license expiration date . Payment of the penalty shall entitle the applicant to 60 days from the date of the penalty payment to complete the application. If the application is not completed within such time, the application shall be denied and all fees retained by the department.

(2) If the penalty described in paragraph (1) is not paid within the 30-day period, any application for renewal of a preexisting license shall be treated as a new application.

(b) A new applicant shall have 60 days from the date of filing the application form and payment of the fee to complete the application. After the 60-day period has elapsed, if the application remains incomplete, the application may be denied and the application fee retained by the department.

CHAPTER 199

An act to amend Section 55601.5 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 55601.5 of the Food and Agricultural Code is amended to read:

55601.5. (a) (1) Notwithstanding Section 55461, on or before January 10 of every year, every processor who crushes grapes in this state shall furnish to the secretary, on forms provided by the secretary, a report that includes all of the following:

(A) The total number of tons of grapes purchased by the processor in this state during the preceding crush within each grape-pricing district, broken down by total tons purchased, variety, and price, including any bonuses or allowances, and sugar calculations.

(B) The total number of tons of grapes purchased by the processor in this state in nonrelated purchases during the preceding crush within each grape-pricing district, broken down by total tons purchased, variety, and price, including any bonuses or allowances, and sugar calculations.

(C) The total number of tons of each variety of grape crushed within each grape-pricing district and the average sugar content of each variety within each grape-pricing district.

(D) The total number of tons of grapes purchased and crushed that are expected, as of the date of reporting by the processor, to be marketed as grape concentrate. In reporting tons purchased and crushed that are expected to be marketed as grape concentrate, processors may estimate equivalent tonnage. In estimating the equivalent tonnage, the processor shall include all equivalent tons crushed for the production of grape concentrate for wine and all other purposes marketed outside the state and the equivalent tons crushed for the production of grape concentrate for all purposes other than wine marketed within the state. In determining the estimated equivalent tons, processors shall make their best estimate of the gallons of concentrate per ton of grapes crushed based upon the Brix level of the grapes used in concentrate production.

(2) (A) When reporting price within the category of all tonnage purchased, processors shall include grapes purchased from (i) growers for wine, wine vinegar, juice, concentrate, and beverage brandy, (ii) another processor only if that processor was also the grower of the grapes, (iii) growers that are considered separate entities from the processor operation, or (iv) growers or other processors, but not by the reporting processor; and shall exclude (i) material other than grapes, and defects, or other weight adjustments deducted from the gross-weight ticket, (ii) any raisin-distilling material, (iii) grapes grown by the processor from vineyards that are not considered separate entities, (iv) grapes purchased from other processors that were previously purchased from growers, or (v) grapes crushed to grower accounts or crushed for other wineries. If several varieties were packaged together and purchased for one price, the processor shall report the average price per ton as one mixed lot, and when reporting crush information, shall report individual variety and tonnage information.

(B) When reporting price within the category of nonrelated purchases, processors shall exclude tonnage of grapes purchased

from a grower if, during the reporting year (i) the grower or an affiliate of the grower, or both the grower and the affiliate of the grower, owned, directly or indirectly, at least 5 percent of the indicia of ownership or voting authority of the processor, (ii) the processor or an affiliate of the processor, or both the processor and the affiliate of the processor, owned, directly or indirectly, at least 5 percent of the indicia of ownership or voting authority of the grower, or (iii) the processor or an affiliate of the processor, or both the processor and the affiliate of the processor, provided long-term financing to the grower in exchange for rights or options to purchase a significant portion of the grower's harvest.

(b) On or before February 25 of every year, each processor who crushes grapes in this state shall furnish to the secretary information concerning the final prices, including any bonuses or allowances, paid by variety and grape-pricing district to all growers holding reference price contracts in effect prior to January 1, 1977, which payments have not been reported on January 10.

(c) (1) The secretary may not release or otherwise make available any information furnished by an individual processor under this section, except in proceedings brought against the processor by the secretary for the purpose of enforcing this section, or except in the case of a producer who holds any reference price-grape purchase contract, to whom the secretary may furnish, upon request and at a reasonable cost, the information needed to verify the reference price, including any bonuses or allowances, set forth in the contract.

(2) The secretary shall not release or otherwise make available any information furnished by an individual processor under this section to any other division of the department except in accordance with a subpoena issued in accordance with Section 1985.3 of the Code of Civil Procedure.

(3) The secretary shall release only aggregate figures for grapes crushed that are expected to be marketed as grape concentrate and shall not include information by district, types, or variety.

(d) The secretary shall enforce the collection of the information and, on or before February 10 of each year, shall publish a preliminary summary report on the preceding crush. The report shall include all of the following information:

(1) The weighted average price paid on the basis of the prices, including any bonuses or allowances, reported and average sugar content for each grape variety purchased within each grape-pricing district.

(2) The total number of tons of grapes crushed and the average sugar content for each grape variety within each grape-pricing district.

(3) Each price category paid, separated by sugar calculations, if any, and the percentage each represents of the total for each variety within each grape-pricing district.

(4) Commencing with the report for the 1997 crush, in a separate and independent table without affecting or modifying existing tables, by weighted average price only, nonrelated purchases, by variety within each grape-pricing district excluding any bonuses, allowances, sugar calculations, and tonnage.

(e) On or before March 10 of each year, the secretary shall publish a final summary report, which shall contain all of the data furnished by the processors on or before January 10 and on or before February 25 of each year covering purchases under reference price contracts. The secretary may publish an addendum or supplemental report when reasonably necessary to correct any erroneous or misleading information contained in the annual report required by this section.

(f) The forms provided to processors by the secretary pursuant to this section shall provide for the separate reporting of grapes used by a processor (1) as distilling material and (2) for both beverage brandy and other than beverage brandy. A processor shall report all grapes used as distilling material by variety. The secretary, in determining the weighted average price paid for each grape variety purchased within each grape-pricing district, shall not include the prices paid for grapes of any variety used as distilling material for other than beverage brandy in determining the weighted average price. The secretary's report shall include a separate summary regarding grapes used by processors as distilling material.

(g) All grape purchase contracts entered into on or after January 1, 1977, shall provide for a final price, including any bonuses or allowances, to be set on or before the January 10 following delivery of the grapes purchased. Any grape purchase contract entered into in violation of this subdivision is illegal and unenforceable. For the purpose of this section, a grape purchase contract shall not include any existing supply contract between a nonprofit cooperative association and a commercial processor.

(h) (1) If the department reasonably believes that a processor has failed, refused, or neglected to provide the information required by this section, or if the department finds apparent discrepancies in the information reported, the department may audit or investigate in accordance with Article 11 (commencing with Section 55721) or proceed in accordance with Article 5 (commencing with Section 55522.5), except as specified in paragraph (6). Injunctive relief under Section 55921 shall issue only upon a finding by a court of competent jurisdiction that a processor has done any of the following:

(A) Refused to submit required information after the department provides reasonable notice to the processor of the processor's obligations and rights under this chapter.

(B) Misreported a fact, knowing that fact to be false, or in reckless disregard for whether the fact was true.

(2) Both the refusal to submit after the provision of reasonable notice and the misreporting of a fact under the circumstances set forth in this subdivision shall constitute violations of this chapter.

Neither a refusal to submit nor a misreporting of a fact under this subdivision shall be prosecuted pursuant to Article 18 (commencing with Section 55901) or subject to civil penalties under Article 19 (commencing with Section 55921).

(3) In the case of misreporting in any action authorized by this section, it shall be a defense for a processor to rely on information provided to the processor by a producer with respect to whether a purchase is a related purchase.

(4) In the case of a refusal to report or misreporting, the department shall not commence an audit or investigation, other than a routine audit based on scientifically proven random sampling methods, without first disclosing to the processor being audited or investigated any and all information that constitutes the department's belief that the processor has not complied, including the identities of all persons providing information on potential violations to the department.

(5) Anonymous complaints, unattributable information, or undocumented information shall not constitute reasonable belief and shall not be the basis for any investigation or audit action brought under this section. The department shall inform the processor of its reasons for auditing.

(6) No action shall be taken pursuant to Article 5 (commencing with Section 55522.5), Article 18 (commencing with Section 55901), or Article 19 (commencing with Section 55921) based on the reporting of grape concentrate pursuant to subparagraph (D) of paragraph (1) of subdivision (a).

(i) For purposes of this section, the following definitions shall apply:

(1) "Affiliate" or "affiliated with" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of another person. For the purposes of this paragraph, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.

(2) "Estimated equivalent tons," when used in the context of reporting tons purchased and crushed that will be marketed as grape concentrate, shall be determined by use of the following formulas:

(A) Gallons of concentrate (approximately 20° Brix) produced divided by 40 equals equivalent tons.

(B) Gallons of concentrate (approximately 68° Brix) divided by 170 equals equivalent tons.

(3) "Grape-pricing district" means a district used by the federal-state cooperative market news services, as provided in Section 58231.

(4) "Long-term financing" means financing that by its terms is due over a period of more than one year, or more than 180 days if there is a purchase agreement between a grower and a processor, or

if there is a farming agreement where the purchase price is on a per-acre basis.

(5) "Person" includes an individual, partnership, corporation, limited liability company, firm, company, or other entity.

(6) "Purchase" means the taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property. For purposes of this paragraph, "sale" shall consist of the passing of title from the seller to the buyer for a price.

CHAPTER 200

An act to amend Section 74 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 74 of the Revenue and Taxation Code is amended to read:

74. (a) For purposes of subdivision (a) of Section 2 of Article XIII A of the Constitution, "newly constructed" does not include the construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement that is constructed or installed on or after November 7, 1984.

(b) Notwithstanding any other provision of this chapter or Chapter 3.5 (commencing with Section 75), neither "newly constructed" nor "new construction" includes the construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement that is constructed or installed on or after November 7, 1984.

(c) For purposes of this section:

(1) "Fire sprinkler system" means any system intended to discharge water for the purpose of suppressing or extinguishing a fire, and includes a fire sprinkler system that derives its water from the domestic water supply of the building or structure of which it is a part.

(2) "Other fire extinguishing system" means any system intended to suppress or to extinguish a fire other than by discharging water upon the fire. An "other fire extinguishing system" includes, but is not limited to, a component or application that, solely or primarily for the purposes of fire suppression or extinguishment, is made part of the heating, ventilating, or air-conditioning system of a building or structure, a wet chemical system, or a dry chemical system.

(3) "Fire detection system" means any system or appliance intended to detect combustion, or the products thereof, and to activate an alarm or signal, whether audio, visual, or otherwise, including all equipment used to transmit fire alarm activations and related signals to a remote location. A fire detection system includes any system that serves additional functions, but this section shall only apply with respect to that portion of a system that is for fire detection purposes. No portion of a fire detection system as described in this paragraph shall be deemed to be personal property, or shall be deemed to be excluded from that fire detection system, by reason of being owned or controlled by a person other than the owner of property upon which the fire detection system was constructed or installed.

(4) "Fire-related egress improvement" means any improvement intended to do either of the following:

(A) Provide any new, or improve any existing, means of egress for individuals from a structure, or any portion thereof, in which a fire is in progress, as to which there is an imminent threat that a fire may soon be in progress, or as to which individuals therein might be subjected to health hazards or the risk of physical injury due to a fire elsewhere.

(B) With respect to individuals who for any reason cannot evacuate a structure in which a fire is in progress, provide a means of safeguarding, or increasing the safety of, those individuals until the time that the rescue of those individuals can be effected.

(5) "Existing building" means any building or structure already erected at the time that a fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement is constructed or installed in that building or structure.

(d) Any system or improvement referred to in this section shall be deemed to have been constructed or installed on or after November 7, 1984, if the actual construction or installation thereof is completed on or after November 7, 1984, regardless of when the actual construction or installation thereof was commenced or any building permit pertaining thereto was issued.

(e) This section applies only to fire sprinkler systems, other fire extinguishing systems, fire detection systems, and fire-related egress improvements, as defined in this section, that are constructed or installed in an existing building.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

———

CHAPTER 201

An act to add Section 50088 to the Government Code, relating to public employees.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 50088 is added to the Government Code, to read:

50088. (a) As used in this section:

(1) "Civil service system," as applied to a county or city or county, means the approved local merit system (ALMS).

(2) "Veteran" has the same meaning as in Section 18973.

(3) "Veterans service office" means an office established pursuant to Section 970 of the Military and Veterans Code.

(b) When any city, county, or city and county, general law or chartered, has established a civil service system and entrance examination for the selection of appointive officers and employees, the board of supervisors or city council, by January 1, 2002, shall either implement a veterans' preference system giving preference to a veteran over other identically qualified applicants, or shall adopt a resolution identifying reasons that it does not implement a veterans' preference system.

(c) Nothing in this act shall be construed to require a city, county, or city and county, to implement a veterans' preference system. However, it is the intent of the Legislature in enacting this section that cities, counties, and cities and counties, to the extent possible, further the public policy embodied in Section 6 of Article VII of the California Constitution to promote veterans' preference.

(d) In enacting this section, the Legislature finds and declares that veterans' preference in civil service examinations is a matter of statewide concern.

(e) It is the intent of the Legislature that a board of supervisors or city council may seek the voluntary assistance of a veterans service office serving that area in implementing a veterans' preference system.

CHAPTER 202

An act to amend Sections 1204 and 1800 of the Code of Civil Procedure, relating to court proceedings.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 1204 of the Code of Civil Procedure is amended to read:

1204. When any assignment, whether voluntary or involuntary, and whether formal or informal, is made for the benefit of creditors of the assignor, or results from any proceeding in insolvency or receivership commenced against him or her, or when any property is turned over to the creditors of a person, firm, association or corporation, or to a receiver or trustee for the benefit of creditors, the following claims have priority in the following order:

(a) Allowed unsecured claims, but only to the extent of four thousand three hundred dollars ($4,300) for each individual or corporation, as the case may be, earned within 90 days before the date of the making of such assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first, for either of the following:

(1) Wages, salaries, or commissions, including vacation, severance and sick leave pay earned by an individual.

(2) Sales commissions earned by an individual, or by a corporation with only one employee, acting as an independent contractor in the sale of goods or services of the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding the date of the making of the assignment or the taking over of the property or the commencement of the proceeding or the date of the cessation of the debtor's business, whichever occurs first, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(b) Allowed unsecured claims for contributions to employee benefit plans arising from services rendered within 180 days before the date of the making of the assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first; but only for each employee benefit plan, to the extent of the number of employees covered by the plan multiplied by four thousand three hundred dollars ($4,300), less the aggregate amount paid to the employees under subdivision (a), plus the aggregate amount paid by the estate on behalf of the employees to any other employee benefit plan.

(c) The above claims shall be paid by the trustee, assignee or receiver before the claim of any other creditor of the assignor, insolvent, or debtor whose property is so turned over, and shall be paid as soon as the money with which to pay same becomes available. If there is insufficient money to pay all the labor claims in full, the money available shall be distributed among the claimants in proportion to the amount of their respective claims. The trustee,

receiver or assignee for the benefit of creditors shall have the right to require sworn claims to be presented and shall have the right to refuse to pay any such preferred claim, either in whole or in part, if he or she has reasonable cause to believe that a claim is not valid but shall pay any part thereof that is not disputed, without prejudice to the claimant's rights, as to the balance of his or her claim, and withhold sufficient money to cover the disputed portion until the claimant in question has a reasonable opportunity to establish the validity of his or her claim by court action, either in his or her own name or through an assignee.

(d) This section is binding upon all the courts of this state and in all receivership actions the court shall order the receiver to pay promptly out of the first receipts and earnings of the receivership, after paying the current operating expenses, such preferred labor claims.

SEC. 1.5. Section 1204 of the Code of Civil Procedure is amended to read:

1204. When any assignment, whether voluntary or involuntary, and whether formal or informal, is made for the benefit of creditors of the assignor, or results from any proceeding in insolvency or receivership commenced against him or her, or when any property is turned over to any creditor of a person, firm, association, or corporation, or to a receiver or trustee for the benefit of creditors, the following claims have priority in the following order:

(a) Allowed unsecured claims, but only to the extent of four thousand three hundred dollars ($4,300) for each individual or corporation, as the case may be, earned within 90 days before the date of the making of the assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first, for either of the following:

(1) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.

(2) Sales commissions earned by an individual, or by a corporation with only one employee, acting as an independent contractor in the sale of goods or services of the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding the date of the making of the assignment or the taking over of the property or the commencement of the proceeding or the date of the cessation of the debtor's business, whichever occurs first, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(b) Allowed unsecured claims for contributions to employee benefit plans arising from services rendered within 180 days before the date of the making of the assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first; but

only for each employee benefit plan, to the extent of the number of employees covered by the plan multiplied by four thousand three hundred dollars ($4,300), less the aggregate amount paid to the employees under subdivision (a), plus the aggregate amount paid by the estate on behalf of the employees to any other employee benefit plan.

(c) The preferred claims described in subdivisions (a) and (b) shall constitute a lien upon all property of the debtor, superior and prior to all other liens created by, or recognized by, the law of this state, to be paid by the trustee, assignee, creditor to whom the property is turned over, or receiver before the claim of any other creditor secured or unsecured of the assignor, insolvent, or debtor whose property is so turned over, and shall be paid as soon as the money with which to pay the claims becomes available. If there is insufficient money to pay all the labor claims in full, the money available shall be distributed among the claimants in proportion to the amount of their respective claims. The trustee, receiver, or assignee for the benefit of creditors shall have the right to require sworn claims to be presented and shall have the right to refuse to pay any preferred claim, either in whole or in part, if he or she has reasonable cause to believe that a claim is not valid but shall pay any part thereof that is not disputed, without prejudice to the claimant's rights, as to the balance of his or her claim, and withhold sufficient money to cover the disputed portion until the claimant in question has a reasonable opportunity to establish the validity of his or her claim by court action, either in his or her own name or through an assignee.

(d) This section is binding upon all the courts of this state and in all receivership actions the court shall order the receiver to pay promptly out of the first receipts and earnings of the receivership, after paying the current operating expenses, the preferred labor claims. In any action to enforce this section, reasonable attorney's fees and costs shall be awarded to the successful labor claimant.

SEC. 2. Section 1800 of the Code of Civil Procedure is amended to read:

1800. (a) In this section:

(1) The term "insolvent" means:

(A) With reference to a person other than a partnership, a financial condition such that the sum of the person's debts is greater than all of the person's property, at a fair valuation, exclusive of both of the following:

(i) Property transferred, concealed, or removed with intent to hinder, delay, or defraud the person's creditors.

(ii) Property that is exempt from property of the estate pursuant to the election of the person made pursuant to Section 1801.

(B) With reference to a partnership, financial condition such that the sum of the partnership's debts are greater than the aggregate of, at a fair valuation, both of the following:

(i) All of the partnership's property, exclusive of property of the kind specified in clause (i) subparagraph (A).

(ii) The sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in clause (ii) of subparagraph (A), over the partner's separate debts.

(2) The term "inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease.

(3) The term "insider" means:

(A) If the assignor is an individual, any of the following:

(i) A relative of the assignor or of a general partner of the assignor.

(ii) A partnership in which the assignor is a general partner.

(iii) A general partner of the assignor.

(iv) A corporation of which the assignor is a director, officer, or person in control.

(B) If the assignor is a corporation, any of the following:

(i) A director of the assignor.

(ii) An officer of the assignor.

(iii) A person in control of the assignor.

(iv) A partnership in which the assignor is a general partner.

(v) A general partner of the assignor.

(vi) A relative of a general partner, director, officer, or person in control of the assignor.

(C) If the assignor is a partnership, any of the following:

(i) A general partner in the assignor.

(ii) A relative of a general partner in, general partner of, or person in control of the assignor.

(iii) A partnership in which the assignor is a general partner.

(iv) A general partner of the assignor.

(v) A person in control of the assignor.

(D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were the assignor.

(E) A managing agent of the assignor.

As used in this paragraph, "relative" means an individual related by affinity or consanguinity with the third degree as determined by the common law, or an individual in a step or adoptive relationship within the third degree; and an "affiliate" means a person that directly or indirectly owns, controls or holds with power to vote 20 percent or more of the outstanding voting securities of the assignor or 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the assignor (excluding securities held in a fiduciary or agency capacity without sole discretionary power to vote, or held solely to secure a debt if the holder has not in fact exercised the power to vote), or a person who operates the business of the assignor under a

lease or operating agreement or whose business is operated by the assignor under a lease or operating agreement.

(4) The term "judicial lien" means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(5) The term "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the assignor or the assignee under any applicable law, but does not include an obligation substituted for an existing obligation.

(6) The term "receivable" means a right to payment, whether or not the right has been earned by performance.

(7) The term "security agreement" means an agreement that creates or provides for a security interest.

(8) The term "security interest" means a lien created by an agreement.

(9) The term "statutory lien" means a lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not the interest or lien is provided by or is dependent on a statute and whether or not the interest or lien is made fully effective by statute.

(10) The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.

(b) Except as provided in subdivision (c), the assignee of any general assignment for the benefit of creditors (as defined in Section 493.010) may recover any transfer of property of the assignor:

(1) To or for the benefit of a creditor;

(2) For or on account of an antecedent debt owed by the assignor before the transfer was made;

(3) Made while the assignor was insolvent;

(4) Made on or within 90 days before the date of the making of the assignment or made between 90 days and one year before the date of making the assignment if the creditor, at the time of the transfer, was an insider and had reasonable cause to believe the debtor was insolvent at the time of the transfer; and

(5) That enables the creditor to receive more than another creditor of the same class.

(c) The assignee may not recover under this section a transfer:

(1) To the extent that the transfer was:

(A) Intended by the assignor and the creditor to or for whose benefit the transfer was made to be a contemporaneous exchange for new value given to the assignor; and

(B) In fact a substantially contemporaneous exchange;

(2) To the extent that the transfer was:

(A) In payment of a debt incurred in the ordinary course of business or financial affairs of the assignor and the transferee;

(B) Made in the ordinary course of business or financial affairs of the assignor and the transferee; and

(C) Made according to ordinary business terms;

(3) Of a security interest in property acquired by the assignor:

(A) To the extent the security interest secures new value that was:

(i) Given at or after the signing of a security agreement that contains a description of the property as collateral;

(ii) Given by or on behalf of the secured party under the agreement;

(iii) Given to enable the assignor to acquire the property; and

(iv) In fact used by the assignor to acquire the property; and

(B) That is perfected within 20 days after the security interest attaches;

(4) To or for the benefit of a creditor, to the extent that, after the transfer, the creditor gave new value to or for the benefit of the assignor:

(A) Not secured by an otherwise unavoidable security interest; and

(B) On account of which new value the assignor did not make an otherwise unavoidable transfer to or for the benefit of the creditor;

(5) Of a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all the transfers to the transferee caused a reduction, as of the date of the making of the assignment and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by the security interest exceeded the value of all security interest for the debt on the later of:

(A) Ninety days before the date of the making of the assignment.

(B) The date on which new value was first given under the security agreement creating the security interest; or

(6) That is the fixing of a statutory lien.

(7) That is payment to a claimant, as defined in Section 3085 of the Civil Code, in exchange for the claimant's waiver or release of any potential or asserted claim of lien, stop notice, or right to recover on a payment bond, or any combination thereof.

(8) To the extent that the transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of, the spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, or a determination made in accordance with state or territorial law by a governmental unit, or property settlement agreement; but not to the extent that either of the following occurs:

(A) The debt is assigned to another entity voluntarily, by operation of law or otherwise, in which case, the assignee may not recover that portion of the transfer that is assigned to the state or any political subdivision of the state pursuant to Part D of Title IV of the

Social Security Act (42 U.S.C. Sec. 601, et. seq.) and passed on to the spouse, former spouse, or child of the debtor.

(B) The debt includes a liability designated as alimony, maintenance, or support, unless the liability is actually in the nature of alimony, maintenance, or support.

(d) An assignee of any general assignment for the benefit of creditors (as defined in Section 493.010), may avoid a transfer of property of the assignor transferred to secure reimbursement of a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the assignee under subdivision (b) of this section. The liability of the surety under the bond or obligation shall be discharged to the extent of the value of the property recovered by the assignee or the amount paid to the assignee.

(e) (1) For the purposes of this section:

(A) A transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of the property from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee.

(B) A transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3), a transfer is made at any of the following times:

(A) At the time the transfer takes effect between the transferor and the transferee, if the transfer is perfected at, or within 10 days after, the time, except as provided in subparagraph (B) of paragraph (3) of subdivision (c).

(B) At the time the transfer is perfected, if the transfer is perfected after the 10 days.

(C) Immediately before the date of the making of the assignment if the transfer is not perfected at the later of:

(i) The making of the assignment.

(ii) Ten days after the transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the assignor has acquired rights in the property transferred.

(f) For the purposes of this section, the assignor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the making of the assignment.

(g) An action by an assignee under this section must be commenced within one year after the making of the assignment.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1204 of the Code of Civil Procedure proposed by both this bill and SB 914. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill

amends Section 1204 of the Code of Civil Procedure, and (3) this bill is enacted after SB 914, in which case Section 1 of this bill shall not become operative.

CHAPTER 203

An act to add Section 6166 to the Government Code, and to amend Sections 19005 and 19104 of the Revenue and Taxation Code, relating to state levies.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 6166 is added to the Government Code, to read:

6166. Any state agency accepting payment by a means of credit card, whether pursuant to this chapter or Section 19005 of the Revenue and Taxation Code, shall, when sending a billing statement, notify each payer permitted to make payment to that agency by means of a credit card of his or her option of making payment by means of a credit card. Each state agency that sends a billing statement to an individual who is allowed to make payment to that agency by means of a credit card shall provide either of the following on that statement or on a document provided with the statement:

(a) A designated space on the payment form upon which the payer can provide a credit card number, expiration date, and signature.

(b) Complete instructions as to the procedure, by means of telephone or otherwise, that the payer must follow in order to pay by means of a credit card.

SEC. 2. Section 19005 of the Revenue and Taxation Code is amended to read:

19005. The tax, and any interest and penalties, shall be paid to the Franchise Tax Board. Except as provided in Section 19011 with respect to an electronic funds transfer, remittances may be in the form of a check, payable in United States funds to the Franchise Tax Board, at the time and in the manner as the Franchise Tax Board may prescribe or, notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Title 3 of the Civil Code, in the form of a credit card or other payment device as defined in Chapter 2.6 (commencing with Section 6160) of the Government Code, at the time and in the manner that the Franchise Tax Board may prescribe. If a check or credit card remittance is not paid by the bank on which it is drawn, the taxpayer tendering the check or credit card remittance remains

liable for the payment of the tax, and all interest and penalties, as if the check or credit card remittance had not been tendered.

SEC. 3. Section 19104 of the Revenue and Taxation Code is amended to read:

19104. (a) Interest upon the amount assessed as a deficiency shall be assessed, collected, and paid in the same manner as the tax at the adjusted annual rate established pursuant to Section 19521 from the date prescribed for the payment of the tax or, if the tax is paid in installments, from the date prescribed for payment of the first installment, until the date the tax is paid. If any portion of the deficiency is paid prior to the date it is assessed, interest shall accrue on that portion only to the date paid.

(b) If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Interest on amounts erroneously made or allowed shall not accrue until 30 days from the date the Franchise Tax Board mails a notice and demand for repayment as provided by this subdivision.

(c) (1) In the case of any assessment of interest, the Franchise Tax Board may abate the assessment of all or any part of that interest for any period in any of the following circumstances:

(A) Any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(B) Any payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to that officer or employee being dilatory in performing a ministerial or managerial act.

(C) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable or income year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(D) For purposes of this paragraph:

(i) Except as provided in subparagraph (C), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(ii) Within 180 days after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization. The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(iii) Except for the amendment adding clause (ii), the amendments made by the act adding this clause are operative with respect to taxable or income years beginning on or after January 1, 1998. The amendment adding clause (ii) is operative for requests for abatement made on or after January 1, 1998.

(2) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless either of the following has occurred:

(A) The taxpayer (or a related party) has in any way caused that erroneous refund.

(B) That erroneous refund exceeds fifty thousand dollars ($50,000).

CHAPTER 204

An act to amend Section 44241 of the Health and Safety Code, relating to air pollution.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 44241 of the Health and Safety Code is amended to read:

44241. (a) Fee revenues generated under this chapter in the bay district shall be subvened to the bay district by the Department of Motor Vehicles after deducting its administrative costs pursuant to Section 44229.

(b) Fee revenues generated under this chapter shall be allocated by the bay district to implement the following mobile source and transportation control projects and programs that are included in the plan adopted pursuant to Sections 40233, 40717, and 40919:

(1) The implementation of ridesharing programs.

(2) The purchase or lease of clean fuel buses for school districts and transit operators.

(3) The provision of local feeder bus or shuttle service to rail and ferry stations and to airports.

(4) Implementation and maintenance of local arterial traffic management, including, but not limited to, signal timing, transit signal preemption, bus stop relocation and "smart streets."

(5) Implementation of rail-bus integration and regional transit information systems.

(6) Implementation of low-emission and zero-emission vehicle programs and of demonstration projects in telecommuting and in congestion pricing of highways, bridges, and public transit. No funds expended pursuant to this paragraph for telecommuting projects shall be used for the purchase of personal computing equipment for an individual's home use.

(7) Implementation of a smoking vehicles program.

(8) Implementation of an automobile buy-back scrappage program operated by a governmental agency.

(9) Implementation of bicycle facility improvement projects that are included in an adopted countywide bicycle plan or congestion management program.

(10) The design and construction by local public agencies of physical improvements that support development projects that achieve motor vehicle emission reductions. The projects and the physical improvements shall be identified in an approved area-specific plan, redevelopment plan, general plan, or other similar plan.

(c) Fee revenue generated under this chapter shall be allocated by the bay district for projects and programs specified in subdivision (b) to cities, counties, the Metropolitan Transportation Commission, transit districts, or any other public agency responsible for implementing one or more of the specified projects or programs. Fee revenues shall not be used for any planning activities that are not directly related to the implementation of a specific project or program.

(d) Not less than 40 percent of fee revenues shall be allocated to the entity or entities designated pursuant to subdivision (e) for projects and programs in each county within the bay district based upon the county's proportionate share of fee-paid vehicle registration.

(e) In each county, one or more entities may be designated as the overall program manager for the county by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The resolution shall specify the terms and conditions for the expenditure of funds. The entities so designated shall be allocated the funds pursuant to subdivision (d) in accordance with the terms and conditions of the resolution.

(f) Any county, or entity designated pursuant to subdivision (e), that receives funds pursuant to this section, at least once a year, shall hold one or more public meetings for the purpose of adopting criteria for expenditure of the funds and to review the expenditure of revenues received pursuant to this section by any designated entity.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 205

An act to amend Section 35556 of the Education Code, relating to school district reorganization.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 35556 of the Education Code is amended to read:

35556. (a) The reorganization of any school district, or districts, shall not affect the rights of persons employed in positions not requiring certification qualifications to retain the salary, leaves, and other benefits which they would have had if the reorganization had not occurred. These persons shall be treated in the manner provided in this section.

(b) All employees of every school district that is included in any other district, or all districts included in a new district, shall become employees of the new district.

(c) (1) When a portion of the territory of any district becomes part of another district, employees regularly assigned to perform their duties in the territory affected shall become employees of the acquiring district unless, in a manner consistent with relevant provisions of this code and with any applicable collective bargaining agreement, one of the following occurs:

(A) An employee elects to accept a vacant position, for which he or she qualifies, that the first district elects to fill.

(B) An employee elects to fill, by exercise of his or her rights of seniority under existing law or the collective bargaining agreement with the first district, a position, for which he or she qualifies, in the first district.

(C) An employee elects to have his or her name entered on a reemployment list of the first district.

(2) Employees whose assignments pertained to the affected territory, but whose employment situs was not in that territory, may elect to remain with the original district or become employees of the acquiring district.

(d) When the territory of any district is divided between, or among, two or more districts and the original district ceases to exist, employees of the original district regularly assigned to perform their duties in any specific territory of the district shall become employees of the district acquiring the territory. Employees not assigned to specific territory within the original district shall become employees of any acquiring district at the election of the employees.

(e) An employee regularly assigned by the original district to any school in the district shall be an employee of the district in which the school is located unless that employee elects to continue in the employ of the first district pursuant to subdivision (c).

(f) Except as otherwise provided in this section, nothing in this section shall be construed to deprive the governing board of the acquiring district from making reasonable reassignments of duties.

(g) The amendments to this section made during the 1999–2000 Regular Session of the Legislature shall apply only to school district reorganizations commenced on or after January 1, 2000.

CHAPTER 206

An act to add and repeal Section 12814.8 to the Vehicle Code, relating to vehicles.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 12814.8 is added to the Vehicle Code, to read:

12814.8. (a) The department shall conduct a pilot study of persons under 18 years of age to compare the effectiveness of driver education programs conducted in a nonclassroom environment with classroom-based programs.

(b) For the purpose of this section, the following definitions apply:

(1) "Driver education" is automobile driver education, as described in subdivision (j) of Section 51220 of, and Section 51220.1 of, the Education Code.

(2) "Exit examination" is a test designed by the department and administered to each participant in the study to evaluate traffic safety knowledge and driver attitude.

(3) "Private school" is any entity that has complied with Section 33190 of the Education Code.

(c) The department shall select a number of providers to participate in the study to ensure that each of the following categories of programs are adequately represented:

(1) A driver education program delivered in a classroom environment under the direct supervision of an instructor as required in Chapter 1 (commencing with Section 11100) of Division 5.

(2) A driver education program that uses printed materials or computer-based delivery methods, or both, that meets all of the following requirements:

(A) The program has operated using a nonclassroom format for not less than four years.

(B) The program has provided a minimum of 2,000 hours of driver education, as described in subdivision (j) of Section 51220 of the Education Code, and the principal of the school holds a driving school operator's license issued by the department.

(C) Is a California private secondary school.

(3) A driver education program licensed under Chapter 1 (commencing with Section 11100) of Division 5 selected by the department to present a nonclassroom course utilizing printed materials based upon a model curriculum approved by the department.

(4) A driver education program licensed under Chapter 1 (commencing with Section 11100) of Division 5 selected by the department to present a nonclassroom course utilizing an interactive, computer-based program that follows a model curriculum approved by the department.

(d) The department shall require the selected providers to do all of the following:

(1) Submit to the department a statement that the school, if applicable, is in compliance with Section 33191 of the Education Code.

(2) Maintain on file a release statement signed by the parent or guardian of each student in the study permitting the release of information deemed by the department to be relevant to the completion of the study. The form and contents of the release statement shall be determined by the department.

(3) Provide, at no cost to the department, on a schedule to be determined by the department, information pertaining to the provider's students, including, but not limited to, the student's true full name, the student's birth date, the certificate number, and the date the certificate was issued. All information provided to the department that identifies a specific individual participating in the pilot project shall be kept confidential. All data collected pursuant to this section shall be used only for the purposes of the pilot project.

(4) Maintain all records and proof of compliance under the terms of this section as follows:

(A) Records shall be available for inspection during regular business hours at the principal place of business of the provider by an authorized representative of the department.

(B) Individual records for pilot project participants shall not be requested prior to the 10th working day following completion of the course, and inspections may not take place on Saturdays, Sundays, and legal holidays.

(C) Providers need not retain records for purposes of inspection under this pilot project after January 1, 2004.

(e) The department shall include not less than 8,000 students in the pilot project, with approximately 2,000 participants in each of the groups described in subdivision (c).

(f) The department shall employ a consultant group with established expertise in designing and evaluating driver education curricula for the purpose of developing the curriculum and program standards to be used in this pilot project.

(g) The department shall develop, to the greatest extent possible, a system which randomly assigns students to the programs to be studied during the pilot period.

(h) In order to facilitate the progress of this project, the department shall release all necessary certificates, forms, and booklets to the providers in a timely manner.

(i) The department shall compare the results of exit examination, and the pass and fail rates for written tests and driving tests, of study participants.

(j) Persons participating in this pilot project who meet the course requirements for a certificate of completion shall be deemed to have complied with the automobile driver education requirements for a provisional driver's license pursuant to Section 12814.6.

(k) The department shall collect the data to be used in this pilot project during the period beginning on January 1, 2001, and ending on December 31, 2002.

(*l*) Notwithstanding Section 7550.5 of the Government Code, and subject to subdivision (m), the department shall submit a report of the results of the pilot project to the Legislature not later than May 31, 2003.

(m) The execution and transmission of the final report specified in subdivision (*l*) is contingent on the department's ability to obtain sufficient numbers of program providers and student applicants as required under this section. If the number of participants specified in subdivision (e) is not obtained, the department shall recommend the termination of the pilot project by notifying the Legislature of this fact in writing not later than January 1, 2002.

(n) Nothing in this section shall be construed to impede the ability of any provider selected for this pilot project to continue to provide services to persons who are not participants in the pilot project.

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

CHAPTER 207

An act to amend Section 8961.13 of, and to add Sections 8279 and 9513 to, the Health and Safety Code, relating to local agencies.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 8279 is added to the Health and Safety Code, to read:

8279. A cemetery authority shall comply with the Mausoleum and Columbarium Law (Part 5 (commencing with Section 9501)).

SEC. 2. Section 8961.13 of the Health and Safety Code is amended to read:

8961.13. (a) Notwithstanding any other provision of this part, a district may acquire, construct, improve, maintain, or repair a columbarium for the placement of cremated remains. A district shall comply with the Mausoleum and Columbarium Law, Part 5 (commencing with Section 9501).

(b) A district that possesses a columbarium pursuant to this section may sell the burial rights in niches to residents, taxpayers, and nonresidents, who are otherwise authorized by this part to purchase burial rights in a cemetery lot or plot of the district.

(c) A district that sells burial rights in niches pursuant to subdivision (b) shall establish a rate pursuant to Section 8961.4.

SEC. 3. Section 9513 is added to the Health and Safety Code, to read:

9513. (a) The provisions of this part shall apply to any cemetery that acquires, constructs, improves, maintains, or repairs a mausoleum or columbarium.

(b) The provisions of this part shall apply to any public cemetery district that acquires, constructs, improves, maintains, or repairs a columbarium.

CHAPTER 208

An act to add Section 84602.5 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor July 27, 1999. Filed with
Secretary of State July 28, 1999.]

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

SECTION 1. Section 84602.5 is added to the Government Code, to read:

84602.5. The Secretary of State shall disclose online pursuant to this chapter an index of the identification numbers, as assigned pursuant to subdivision (a) of Section 84101, of every person, entity, or committee that is obligated to make a disclosure pursuant to Chapter 4. This index shall be updated monthly except for the six-week period preceding any statewide regular or special election, during which period the index shall be updated weekly.

SEC. 2. The Legislature finds and declares that the provisions of this act further the purpose of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 209

An act to add Section 44096 to the Health and Safety Code, relating to air quality.

[Approved by Governor July 27, 1999. Filed with
Secretary of State July 28, 1999.]

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

SECTION 1. Section 44096 is added to the Health and Safety Code, to read:

44096. (a) The state board shall review and assess the potential cost-effectiveness, in terms of dollars per ton of emissions reduced, of emissions reduction devices that are intended for installation in light-duty motor vehicles and meet the qualifications specified in subdivision (b). The results of the assessment shall be made available to the department and the districts, and shall be considered by the state board in determining whether an emissions reduction device is a cost-effective means of emissions reduction, as compared with the accelerated light-duty vehicle retirement program conducted pursuant to Article 10 (commencing with Section 44100) and any other vehicle retirement program authorized by the department or the districts.

(b) The state board shall perform the review and assessment specified in subdivision (a) only for an emission reduction device that meets at least one of the following qualifications:

(1) The device has received a certification under the California Environmental Technology Certification Program.

(2) The device has received accreditation under the state board's "Criteria and Test Procedures for Accrediting Emission Control Devices" (ARB "B" Designation) pursuant to Section 43630.

CHAPTER 210

An act to amend Section 10004 of, and to add Section 10004.5 to, the Water Code, relating to water.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) A long-term, reliable supply of water is essential to protect the productivity of California's businesses and economic climate.

(b) The Department of Finance projects that California's population will increase to over 47 million persons by 2020, increasing the need for the development of additional safe and reliable water supplies that are critical to the health, safety, and welfare of all Californians, including the state's future generations.

(c) Water-related infrastructure investment needs are growing rapidly as a result of a growing population and economy, environmental and public health requirements, and aging water delivery systems.

(d) The Department of Water Resources projects that Californians will experience chronic water shortages, as early as 2000, unless actions are taken to increase the amount of developed water available for use in California.

(e) Water conservation, water recycling, voluntary water transfers, conjunctive use, and desalination programs and projects will continue to be an integral part of California's water management strategy.

(f) The review, planning, and development of new water storage facilities and the renewed operation or enlargement of existing water storage facilities should be pursued to ensure that a reliable, high quality supply of water is available to meet the current and future needs of all beneficial uses of water, including urban, agricultural, and environmental uses.

SEC. 2. Section 10004 of the Water Code is amended to read:

10004. (a) The plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state which is set forth and described in Bulletin No.

1 of the State Water Resources Board entitled "Water Resources of California," Bulletin No. 2 of the State Water Resources Board entitled, "Water Utilization and Requirements of California," and Bulletin No. 3 of the department entitled, "The California Water Plan," with any necessary amendments, supplements, and additions to the plan, shall be known as "The California Water Plan."

(b) (1) The department shall update The California Water Plan every five years. The department shall report the amendments, supplements, and additions included in the updates of The California Water Plan, together with a summary of the department's conclusions and recommendations, to the Legislature in the session in which the updated plan is issued.

(2) The department shall establish an advisory committee, comprised of representatives of agricultural and urban water suppliers, local government, business, production agriculture, and environmental interests, and other interested parties, to assist the department in the updating of The California Water Plan. The department shall consult with the advisory committee in carrying out this section.

(3) The department shall release a preliminary draft of The California Water Plan, as updated, upon request, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these comments in the preparation of the final publication of The California Water Plan, as updated.

SEC. 3. Section 10004.5 is added to the Water Code, to read:

10004.5. As part of the requirement of the department to update The California Water Plan pursuant to subdivision (b) of Section 10004, the department shall include in the plan a discussion of various strategies, including, but not limited to, those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state. The department shall include in the plan a discussion of the potential advantages and disadvantages of each strategy and an identification of all federal and state permits, approvals, or entitlements that are anticipated to be required in order to implement the various components of the strategy.

CHAPTER 211

An act to amend Section 16206 of the Welfare and Institutions Code, relating to children's services.

[Approved by Governor July 27, 1999. Filed with
Secretary of State July 28, 1999.]

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

SECTION 1. Section 16206 of the Welfare and Institutions Code is amended to read:

16206. (a) The purpose of the program is to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective service social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities. It is the intent of the Legislature that the program include training for other agencies under contract with county welfare departments to provide child welfare services. In addition, the program shall provide training programs for persons defined as mandated child abuse reporters pursuant to Sections 11165 and following of the Penal Code. The program shall provide the following services to the extent possible within the total allocation. If allocations are insufficient, the department, in consultation with the grantee or grantees and the Child Welfare Training Advisory Board, shall prioritize the efforts of the program, giving primary attention to the most urgently needed services. However, county child protective service social workers assigned emergency response responsibilities shall receive first priority for training pursuant to this act.

(b) The program shall provide practice-relevant training for mandated child abuse reporters and all members of the child welfare delivery system which will address critical issues affecting the well-being of children, and shall develop curriculum materials and training resources for use in meeting staff development needs of mandated child abuse reporters and child welfare personnel in public and private agency settings.

This training shall include all of the following:

(1) Crisis intervention.

(2) Investigative techniques.

(3) Rules of evidence.

(4) Indicators of abuse and neglect.

(5) Assessment criteria, including the application of guidelines for assessment of relatives for placement according to the criteria described in Section 361.3.

(6) Intervention strategies.

(7) Legal requirements of child protection, including requirements of child abuse reporting laws.

(8) Case management.

(9) Using community resources.

(10) Information regarding the dynamics and effects of domestic violence upon families and children.

(11) Post traumatic stress disorder and the causes, symptoms, and treatment of post traumatic stress disorder in children.

The training may also include any or all of the following:

(1) Child development and parenting.

(2) Intake, interviewing, and initial assessment.

(3) Casework and treatment.

(4) Medical aspects of child abuse and neglect.

(c) Prior to January 1, 1989, the department shall provide the Legislative Analyst and the Select Committee on Children and Youth with a listing of the counties participating in the program, including the number of persons trained in each county.

(d) The training program shall assess the program's performance at least annually and forward it to the State Department of Social Services for an evaluation and report to the Legislative Analyst. The first report shall be forwarded to the Legislative Analyst no later than January 1, 1990, and on the first of January in any subsequent years. The assessment shall include at minimum the following:

(1) The number of persons trained.

(2) The type of training provided.

(3) The degree to which the training is perceived by participants as useful in practice.

(e) The training program shall provide practice-relevant training to county child protective service social workers who screen referrals for child abuse or neglect and for all workers assigned to provide emergency response, family maintenance, family reunification, and permanent placement services. The training shall be developed in consultation with the Child Welfare Training Advisory Board and domestic violence victims' advocates and other public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators.

CHAPTER 212

An act to amend Sections 2981 and 2982 of, and to repeal Section 2982.2 of, the Civil Code, relating to conditional sales contracts.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 2981 of the Civil Code is amended to read:

2981. As used in this chapter, unless the context otherwise requires:

(a) "Conditional sale contract" means:

(1) Any contract for the sale of a motor vehicle between a buyer and a seller, with or without accessories, under which possession is

delivered to the buyer and either (A) the title vests in the buyer thereafter only upon the payment of all or a part of the price, or the performance of any other condition, or (B) a lien on the property is to vest in the seller as security for the payment of part or all of the price, or for the performance of any other condition, or

(2) Any contract for the bailment of a motor vehicle between a buyer and a seller, with or without accessories, by which the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the vehicle and its accessories, if any, at the time the contract is executed, and by which it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option of becoming, the owner of the vehicle upon full compliance with the terms of the contract.

(b) "Seller" means a person engaged in the business of selling or leasing motor vehicles under conditional sale contracts.

(c) "Buyer" means the person who buys or hires a motor vehicle under a conditional sale contract.

(d) "Person" includes an individual, company, firm, association, partnership, trust, corporation, limited liability company, or other legal entity.

(e) "Cash price" means the amount for which the seller would sell and transfer to the buyer unqualified title to the motor vehicle described in the conditional sale contract, if the property were sold for cash at the seller's place of business on the date the contract is executed, and shall include taxes to the extent imposed on the cash sale and the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, improvements, document preparation fees, a service contract, and payment of a prior credit or lease balance remaining on property being traded in.

(f) "Downpayment" means any payment which the buyer pays or agrees to pay to the seller in cash or property value or money's worth at or prior to delivery by the seller to the buyer of the motor vehicle described in the conditional sale contract. The term shall also include the amount of any portion of the downpayment the payment of which is deferred until not later than the due date of the second otherwise scheduled payment, if the amount of the deferred downpayment is not subject to a finance charge. The term does not include any administrative finance charge charged, received or collected by the seller as provided in this chapter.

(g) "Amount financed" means the amount required to be disclosed pursuant to paragraph (8) of subdivision (a) of Section 2982.

(h) "Unpaid balance" means the difference between (e) and (f), plus all insurance premiums (except for credit life or disability insurance when the amount thereof is included in the finance charge), which are included in the contract balance, and the total amount paid or to be paid (1) to any public officer in connection with

the transaction, and (2) for license, certificate of title, and registration fees imposed by law, and the amount of the state fee for issuance of a certificate of compliance or certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code.

(i) "Finance charge" has the meaning set forth for that term in Section 226.4 of Regulation Z. The term shall not include delinquency charges or collection costs and fees as provided by subdivision (k) of Section 2982, extension or deferral agreement charges as provided by Section 2982.3, or amounts for insurance, repairs to or preservation of the motor vehicle, or preservation of the security interest therein advanced by the holder under the terms of the contract.

(j) "Total of payments" means the amount required to be disclosed pursuant to subdivision (h) of Section 226.18 of Regulation Z. The term includes any portion of the downpayment which is deferred until not later than the second otherwise scheduled payment and which is not subject to a finance charge. The term shall not include amounts for which the buyer may later become obligated under the terms of the contract in connection with insurance, repairs to or preservation of the motor vehicle, preservation of the security interest therein, or otherwise.

(k) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code which is bought for use primarily for personal or family purposes, and does not mean any vehicle which is bought for use primarily for business or commercial purposes or a mobilehome, as defined in Section 18008 of the Health and Safety Code which is sold on or after July 1, 1981. "Motor vehicle" does not include any trailer which is sold in conjunction with a vessel and which comes within the definition of "goods" under Section 1802.1.

(*l*) "Purchase order" means a sales order, car reservation, statement of transaction or any other such instrument used in the conditional sale of a motor vehicle pending execution of a conditional sale contract. The purchase order shall conform to the disclosure requirements of subdivision (a) of Section 2982 and Section 2984.1 and the provisions of subdivision (m) of Section 2982 shall be applicable thereto.

(m) "Regulation Z" means any rule, regulation or interpretation promulgated by the Board of Governors of the Federal Reserve System ("Board") under the federal Truth in Lending Act, as amended (15 U.S.C. 1601, et seq.), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue such interpretations or approvals.

(n) "Simple-interest basis" means the determination of a finance charge, other than an administrative finance charge, by applying a constant rate to the unpaid balance as it changes from time to time either:

(1) Calculated on the basis of a 365-day year and actual days elapsed (although the seller may, but need not, adjust its calculations

to account for leap years); reference in this chapter to the "365-day basis" shall mean this method of determining the finance charge, or

(2) For contracts entered into prior to January 1, 1988, calculated on the basis of a 360-day year consisting of 12 months of 30 days each and on the assumption that all payments will be received by the seller on their respective due dates; reference in this chapter to the "360-day basis" shall mean this method of determining the finance charge.

(o) "Precomputed basis" means the determination of a finance charge by multiplying the original unpaid balance of the contract by a rate and multiplying that product by the number of payment periods elapsing between the date of the contract and the date of the last scheduled payment.

(p) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair, or both, of the motor vehicle described in the conditional sale contract.

SEC. 2. Section 2982 of the Civil Code is amended to read:

2982. Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed":

(1) (A) The cash price, exclusive of document preparation fees, taxes imposed on the sale, pollution control certification fees, prior credit or lease balance on property being traded in, and the amount charged for a service contract.

(B) The fee to be retained by the seller for document preparation.

(C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.

(D) Taxes imposed on the sale.

(E) The amount charged for a service contract.

(F) The prior credit or lease balance remaining on property being traded in, as required by paragraph (6). The disclosure required by this subparagraph shall be labeled "prior credit or lease balance (see downpayment and trade-in calculation)."

(G) The total cash price, which is the sum of subparagraphs (A) to (F), inclusive.

(2) Amounts paid to public officials for the following:

(A) Vehicle license fees.

(B) Registration, transfer, and titling fees.

(C) Smog impact fees.

(3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.

(4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, exemption, or waiver pursuant to any applicable pollution control statute.

(5) A subtotal representing the sum of the foregoing items.

(6) The amount of the buyer's downpayment itemized to show the following:

(A) The agreed value of the property being traded in.

(B) The prior credit or lease balance, if any, owing on the property being traded in.

(C) The net agreed value of the property being traded in, which is the difference between the amounts disclosed in subparagraphs (A) and (B). If the prior credit or lease balance of the property being traded in exceeds the agreed value of the property, a negative number shall be stated.

(D) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and which is not subject to a finance charge.

(E) The amount of any manufacturer's rebate applied or to be applied to the downpayment.

(F) The remaining amount paid or to be paid by the buyer as a downpayment.

(G) The total downpayment. If the sum of subparagraphs (C) to (F), inclusive, is zero or more, that sum shall be stated as the total downpayment and no amount shall be stated as the prior credit or lease balance under subparagraph (F) of paragraph (1). If the sum of subparagraphs (C) to (F), inclusive, is less than zero, then that sum, expressed as a positive number, shall be stated as the prior credit or lease balance under subparagraph (F) of paragraph (1), and zero shall be stated as the total downpayment. The disclosure required by this subparagraph shall be labeled "total downpayment" and shall contain a descriptor indicating that if the total downpayment is a negative number, a zero shall be disclosed as the total downpayment and a reference made that the remainder shall be included in the disclosure required pursuant to subparagraph (F) of paragraph (1).

(7) The amount of any administrative finance charge, labeled "prepaid finance charge."

(8) The difference between item (5) and the sum of items (6) and (7), labeled "amount financed."

(b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.

(c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.

(d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.

(e) The contract shall contain the names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 is to be sent.

(f) (1) Where the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.

(2) Where the contract includes a finance charge which is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

(g) (1) Where the contract includes a finance charge which is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) Where the contract includes a finance charge which is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(3) Where the contract includes a finance charge which is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

"If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

_____

Buyer's Signature"

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment

included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance (other than for credit life or disability) is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) Except for contracts in which the finance charge or portion thereof is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision (a) is more than two thousand five hundred dollars ($2,500), the dollar amount of the disclosed finance charge shall not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars ($225), $1\frac{1}{6}$ percent on so much of the unpaid balance in excess of two hundred twenty-five dollars ($225) as does not exceed nine hundred dollars ($900) and $\frac{5}{6}$ of 1 percent on so much of the unpaid balance in excess of nine hundred dollars ($900) as does not exceed two thousand five hundred dollars ($2,500); or

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment; or

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars ($25); or

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars ($25) if the unpaid balance does not exceed one thousand dollars ($1,000), (ii) fifty dollars ($50) if the unpaid balance exceeds one thousand dollars ($1,000) but does not exceed two thousand dollars ($2,000), or (iii) seventy-five dollars ($75) if the unpaid balance exceeds two thousand dollars ($2,000).

(2) The holder of the contract shall not charge, collect, or receive a finance charge which exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract which provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds

five thousand dollars ($5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars ($75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge which is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) When a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement shall not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(*l*) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. Where the amount of the refund credit is less than one dollar ($1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) The provisions of this subdivision shall not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.

(5) Notwithstanding any provision of a contract to the contrary, whenever the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2); provided further that the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.

(m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, provided that all of the requirements and limitations set forth in subdivision (a) of this section are satisfied. Nothing in this chapter prohibits the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

(n) If the seller imposes a fee for document preparation, the contract shall contain a disclosure that the fee is not a governmental fee.

(o) No seller may impose an application fee for a transaction governed by this chapter.

(p) The seller or holder may charge and collect a fee not to exceed fifteen dollars ($15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract, if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.

(q) The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

SEC. 3. Section 2982.2 of the Civil Code is repealed.

CHAPTER 213

An act to add Section 1633 to the Civil Code, relating to contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 1633 is added to the Civil Code, to read:

1633. (a) Notwithstanding any other provision of law, an application by a prospective customer to enter into a brokerage agreement with a broker-dealer, which application is transmitted electronically and is accompanied by the prospective customer's electronic signature or digital signature as described in subdivisions (d), (e), (f), and (g), shall be deemed, upon acceptance by the

broker-dealer, to be a fully executed, valid, enforceable, and irrevocable written contract, unless grounds exist which would render any other contract invalid, unenforceable, or revocable.

(b) Nothing in this section abrogates or limits any existing law that would otherwise apply to contracts governed by this section, or any theory of liability or any remedy otherwise available at law.

(c) "Broker-dealer," for purposes of this section, means any broker-dealer licensed pursuant to Part 3 (commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code or exempted from licensing pursuant thereto.

(d) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(e) "Electronic record" means a record created, generated, sent, communicated, received, or stored electronically.

(f) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(g) "Digital signature," for the purposes of this section, means an electronic identifier, created by a computer, that is intended by the party using it to have the same force and effect as the use of a manual signature. The use of a digital signature shall have the same force or effect as a manual signature if it embodies all of the following attributes:

(1) It is unique to the person using it.

(2) It is capable of verification.

(3) It is under the sole control of the person using it.

(4) It is linked to data in a manner that if the data is changed, the digital signature is invalidated.

(h) The use of an electronic signature or digital signature shall have the same force or effect as a manual signature.

(i) The application that is transmitted electronically pursuant to subdivision (a) shall comply with all applicable federal and state securities laws and regulations relating to disclosures to prospective customers. Unless those laws and regulations currently require disclosures to be displayed or printed in bold, to be of specific type or print size, and to be placed prominently at specified locations within the application, the disclosures shall be displayed prominently and printed in capital letters, in bold type and displayed or printed immediately above the signature line. Disclosures shall be written in plain English. The full text of the disclosures shall be contained in the application as required by this subdivision.

(j) Whenever a disclosure to a prospective customer is required under federal or state law or regulation to be confirmed as having been made, the application that is transmitted electronically pursuant to subdivision (a) shall provide a means by which the

prospective customer shall confirm that he or she has read the disclosure.

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 the validity of the increasing number of brokerage agreements entered into through electronic commerce as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 214

An act to amend Section 366.5 of the Public Utilities Code, relating to public utilities.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 366.5 of the Public Utilities Code is amended to read:

366.5. (a) No change in the aggregator or supplier of electric power for any small commercial customer may be made until one of the following means of confirming the change has been completed:

(1) Independent third-party telephone verification.

(2) Receipt of a written confirmation received in the mail from the consumer after the consumer has received an information package confirming the agreement.

(3) The customer signs a document fully explaining the nature and effect of the change in service.

(4) The customer's consent is obtained through electronic means, including but not limited to, computer transactions.

(b) No change in the aggregator or provider of electric power for any residential customer may be made over the telephone until the change has been confirmed by an independent third-party verification company, as follows:

(1) The third-party verification company shall meet each of the following criteria:

(A) Be independent from the entity that seeks to provide the new service.

(B) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by an entity that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the entity.

(C) Operate from facilities physically separate from those of the entity that seeks to provide the new service.

(D) Not derive commission or compensation based upon the number of sales confirmed.

(2) The entity seeking to verify the sale shall do so by connecting the resident by telephone to the third-party verification company or by arranging for the third-party verification company to call the customer to confirm the sale.

(3) The third-party verification company shall obtain the customer's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the customer upon request. Information obtained from the customer through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved resident against the entity or its employees who are responsible for the violation.

(4) Notwithstanding paragraphs (1), (2), and (3), an aggregator or provider of electric power shall not be required to comply with these provisions when the customer directly calls an aggregator or provider of electric power to change service providers. However, an aggregator or provider of electric power shall not avoid the verification requirements by asking a customer to contact an aggregator or provider of electric power directly to make any change in the service provider.

(c) No change in the aggregator or provider of electric power for any residential customer may be made via an Internet transaction, in which the customer accesses the website of the aggregator or provider, unless both of the following occur with respect to confirming the change:

(1) In addition to any other information gathered in the course of the transaction, the customer shall be asked to read and respond to a separate screen that states, in easily legible text, the following:

"I acknowledge that in entering this transaction I am voluntarily choosing to change the entity that supplies me with my electric power."

(2) The separate screen shall offer the customer the option to complete or terminate the transaction.

(d) (1) No change in the aggregator or provider of electric power for any residential customer may be made via a written transaction unless the change has been confirmed, as provided in this subdivision. In order to comply with this subdivision, in addition to any other information gathered in the course of the transaction, and in addition to any other signature required, the customer shall be asked to sign and date a document separate from that written transaction, containing the following words printed in ten point type or larger:

"I acknowledge that in signing this contract or agreement, I am voluntarily choosing to change the entity that supplies me with electric power."

(2) The acknowledgment document described in paragraph (1) may not be included with a check or in connection with a sweepstakes solicitation.

(e) Any aggregator or provider of electric power offering electricity service to residential and small commercial customers that switches the electric service of a customer without the customer's consent shall be liable to the aggregator or provider of electric power offering electricity services previously selected by the customer in an amount equal to all charges paid by the customer after the violation and shall refund to the customer any amount in excess of the amount that the customer would have been obligated to pay had the customer not been switched.

(f) An aggregator or provider of electric power shall keep a record of the confirmation of a change pursuant to subdivision (b), (c), or (d) for two years from the date of that confirmation, and shall make those records available, upon request, to the customer and to the commission in the course of a commission investigation of a customer complaint or an investigation pursuant to subdivision (c) of Section 394.2.

(g) Public agencies are exempt from this section to the extent they are serving customers within their jurisdiction.

(h) Notwithstanding subdivisions (c) and (d), the commission may require third-party verification for all residential changes to electric service providers if it finds that the application of subdivisions (c) and (d) results in the unauthorized changing of a customer's electric service provider.

(i) An electrical corporation is exempt from this section for customers that default to the service of the electrical corporation.

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.

CHAPTER 215

An act to add and repeal Article 9.5 (commencing with Section 18805) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Article 9.5 (commencing with Section 18805) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 9.5. Designations to the California Peace Officer Memorial Foundation Fund

18805. (a) Any taxpayer may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Peace Officer Memorial Foundation Fund, which is established by Section 18806. That designation is to be used as a voluntary checkoff on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. In the event that no designee is specified, the contribution shall be transferred to the General Fund, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and the administration of funds under this article.

(d) In the event a taxpayer designates a contribution to more than one account or fund listed on the tax return, and the amount available for designation is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Peace Officer Memorial Foundation Fund" to allow for the designation permitted. The forms shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used to build and maintain the California Peace Officer Memorial in Sacramento, California, and for activities performed by the California Peace Officer Memorial Foundation in support of families of slain peace officers.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 for any contribution made pursuant to subdivision (a).

18806. There is in the State Treasury the California Peace Officer Memorial Foundation Fund to receive contributions made pursuant to Section 18805. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money which taxpayers have

designated pursuant to Section 18805 to be transferred to the California Peace Officer Memorial Foundation Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Peace Officer Memorial Foundation Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18805 for payment into that fund. It is the intent of the Legislature that the tax return for the 1999 taxable year include a space for the California Peace Officer Memorial Foundation Fund.

18807. All money transferred to the California Foundation Memorial Foundation Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the California Peace Officer Memorial Commission for building and maintaining the California Peace Officer Memorial in Sacramento, California, and for activities performed by the California Peace Officer Memorial Foundation in support of families of slain peace officers.

18808. (a) 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 that date.

(b) If, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), or the adjusted amount specified in subdivision (c), as may be applicable, then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 2001, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall

continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

CHAPTER 216

An act to add Section 354.6 to the Code of Civil Procedure, relating to compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. (a) Thousands of victims of Nazi persecution, and the heirs of victims of Nazi persecution, are residents of the State of California.

(b) These victims of Nazi persecution have been deprived of their entitlement to compensation for their labor and for injuries sustained while performing that labor as forced or slave laborers prior to and during the Second World War.

(c) California has a moral and public policy interest in assuring that its residents and citizens are given a reasonable opportunity to claim their entitlement to compensation for forced or slave labor performed prior to and during the Second World War.

(d) To the extent that the statute of limitations applicable to claims for compensation is extended by this act, that extension of the limitations period is intended to be applied retroactively, irrespective of whether the claims were otherwise barred by any applicable statute of limitations under any other provision of law prior to the enactment of this act.

SEC. 2. It is the intent of the Legislature, in addition to the provisions of this act, to enact additional public policy in any other case of proven patterns of slave labor employed by firms presently doing business in California that served as the basis of ill-gotten wealth at the expense of victims who are residents of California.

SEC. 3. The Treasurer, the Public Employees Retirement System, and the State Teacher's Retirement System shall monitor and report to the Legislature on investments of the state and its pension funds in companies doing business in California, and affiliates of those companies, that owe compensation to victims of slave and forced labor from 1929 to 1945.

SEC. 4. Section 354.6 is added to the Code of Civil Procedure, to read:

354.6. (a) As used in this section:

(1) "Second World War slave labor victim" means any person taken from a concentration camp or ghetto or diverted from

transportation to a concentration camp or from a ghetto to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers.

(2) 'Second World War forced labor victim'' means any person who was a member of the civilian population conquered by the Nazi regime, its allies or sympathizers, or prisoner-of-war of the Nazi regime, its allies or sympathizers, forced to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers.

(3) ''Compensation'' means the present value of wages and benefits that individuals should have been paid and damages for injuries sustained in connection with the labor performed. Present value shall be calculated on the basis of the market value of the services at the time they were performed, plus interest from the time the services were performed, compounded annually to date of full payment without diminution for wartime or postwar currency devaluation.

(b) Any Second World War slave labor victim, or heir of a Second World War slave labor victim, Second World War forced labor victim, or heir of a Second World War forced labor victim, may bring an action to recover compensation for labor performed as a Second World War slave labor victim or Second World War forced labor victim from any entity or successor in interest thereof, for whom that labor was performed, either directly or through a subsidiary or affiliate. That action may be brought in a superior court of this state, which court shall have jurisdiction over that action until its completion or resolution.

(c) Any action brought under this section shall not be dismissed for failure to comply with the applicable statute of limitation, if the action is commenced on or before December 31, 2010.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide just compensation to aging Second World War slave labor victims and Second World War forced labor victims, it is necessary that this act take effect immediately.

CHAPTER 217

An act to amend Section 53635.7 of, and to add Sections 53601.2 and 53635.2 to, the Government Code, relating to local government finance.

[Approved by Governor July 27, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 53601.2 is added to the Government Code, to read:

53601.2. Notwithstanding subdivision (g) of Section 53601, the board of supervisors of a county may invest in commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and have total assets in excess of five hundred million dollars ($500,000,000) and an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days' maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 40 percent of the agency's surplus money that may be invested pursuant to this section. No more than 10 percent of the agency's surplus money that may be invested pursuant to this section may be invested in the outstanding paper of any single issuing corporation.

SEC. 2. Section 53635.2 is added to the Government Code, to read:

53635.2. Notwithstanding subdivision (g) of Section 53635, the board of supervisors of a county may invest in commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and have total assets in excess of five hundred million dollars ($500,000,000) and an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days' maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 40 percent of the agency's surplus money that may be invested pursuant to this section. No more than 10 percent of the

agency's surplus money that may be invested pursuant to this section may be invested in the outstanding paper of any single issuing corporation.

SEC 3. Section 53635.7 of the Government Code is amended to read:

53635.7. In making any decision that involves borrowing in the amount of one hundred thousand dollars ($100,000) or more, the legislative body of the local agency shall discuss, consider, and deliberate each decision as a separate item of business on the agenda of its meeting as prescribed in Chapter 9 (commencing with Section 54950). As used in this section, "borrowing" does not include bank overdrafts.

CHAPTER 218

An act to amend Section 19549 of the Business and Professions Code, relating to horse racing.

[Approved by Governor July 28, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 19549 of the Business and Professions Code is amended to read:

19549. Except as provided in Section 19549.1, the maximum number of racing days that may be allocated to the California Exposition and State Fair or a county or district agricultural association fair or citrus fruit fair shall be 14 days each year. Those racing days shall be days during the period in which general fair activities are conducted. However, any fair racing association that conducted racing in the central or southern zone prior to January 1, 1980, shall be entitled to be allocated up to three weeks of racing. The board shall take public testimony and make all determinations on the allocation of racing dates during a public hearing. All discussions of allocating racing dates by the board or its subcommittees shall be conducted during a public hearing. Nothing in this section diminishes the authority of the board to establish racing dates.

CHAPTER 219

An act to amend Section 19596.2 of the Business and Professions Code, relating to horse racing, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 28, 1999. Filed with
Secretary of State July 28, 1999.]

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

SECTION 1. Section 19596.2 of the Business and Professions Code is amended to read:

19596.2. (a) Notwithstanding any other provision of law, a thoroughbred racing association or fair may distribute the audiovisual signal and accept wagers on the results of out-of-state and out-of-country thoroughbred races during the calendar period the association or fair is conducting a race meeting, including days on which there is no live racing being conducted by the association or fair, without the consent of the organization that represents horsemen participating in the race meeting and without regard to the amount of purses, provided that the total number of thoroughbred races on which wagers are accepted statewide in any given year does not exceed the total number of thoroughbred races on which wagers were accepted in 1998. Further, the total number of thoroughbred races imported by associations or fairs on a statewide basis under this section shall not exceed 23 per day on days when live thoroughbred or fair racing is being conducted in the state. The limitation of 23 imported races per day does not apply to any of the following:

(1) Races imported for wagering purposes pursuant to subdivision (d).

(2) Races imported that are part of the race card of the Kentucky Derby, the Kentucky Oaks, the Preakness Stakes, the Belmont Stakes, the Jockey Club Gold Cup, the Breeders' Cup, or the Haskell Invitational.

(3) Races imported into the northern zone when there is no live thoroughbred or fair racing being conducted in the northern zone.

(4) Races imported into the combined central and southern zones when there is no live thoroughbred or fair racing being conducted in the combined central and southern zones.

(b) Any thoroughbred racing association described in subdivision (a) may execute an agreement with any other association that conducts thoroughbred races in the southern zone to allow the other association to distribute the signal and accept wagers on out-of-country thoroughbred races.

(c) Any thoroughbred association or fair accepting wagers pursuant to subdivision (a) shall conduct the wagering in accordance with the applicable provisions of Sections 19601, 19616, 19616.1, and 19616.2.

(d) No thoroughbred association or fair shall accept wagers pursuant to this section on out-of-state or out-of-country races commencing after 7:00 p.m., Pacific Standard Time, without the consent of the harness or quarter horse racing association that is then

conducting a live racing meeting in Orange or Sacramento Counties, and no quarter horse or harness racing association shall accept wagers on out-of-state or out-of-country quarter horse or harness races commencing before 5:30 p.m., Pacific Standard Time, without the consent of any thoroughbred association or fair that is then conducting a live racing meeting in this state.

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 for racing associations and fairs to generate additional purses and state license fee revenues from wagering on imported stakes racing programs that will be conducted during the remainder of calendar year 1999, it is necessary that this act take immediate effect.

CHAPTER 220

An act to amend Section 1720.3 of the Labor Code, relating to public works.

[Approved by Governor July 28, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 1720.3 of the Labor Code is amended to read:

1720.3. For the limited purposes of Article 2 (commencing with Section 1770), "public works" also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 221

An act to amend Sections 6068 and 6085 of, to amend, repeal, and add Sections 6079.1 and 6086.65 of, and to add Section 6095.1 to, the Business and Professions Code, relating to attorneys.

[Approved by Governor July 28, 1999. Filed with Secretary of State July 28, 1999.]

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

SECTION 1. Section 6068 of the Business and Professions Code is amended to read:

6068. It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain such actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States or any other constitutional or statutory privileges, nor shall this subdivision be construed to require an attorney to cooperate with a request that requires the attorney to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

(j) To comply with the requirements of Section 6002.1.

(k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(*l*) To keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of any judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of any felony, or any misdemeanor committed in the course of the practice of law, or in any manner such that a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or any such misdemeanor.

(6) The imposition of discipline against the attorney by any professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the

matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

SEC. 2. Section 6079.1 of the Business and Professions Code is amended to read:

6079.1. (a) The Supreme Court shall appoint a presiding judge of the State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. The presiding judge and all other judges of that department shall be appointed for a term of six years and may be reappointed for additional six-year terms. Any judge appointed under this section shall be subject to admonition, censure, removal, or retirement by the Supreme Court upon the same grounds as provided for judges of courts of record of this state.

(b) Judges of the State Bar Court appointed under this section shall not engage in the private practice of law. The State Bar Court shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. Each judge:

(1) Shall have been a member of the State Bar for at least five years.

(2) Shall not have any record of the imposition of discipline as an attorney in California or any other jurisdiction.

(3) Shall meet such other requirements as may be established by subdivision (d) of Section 12011.5 of the Government Code.

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge and submit its recommendations to the appointing authority, unless otherwise directed by the appointing authority. The board shall hold hearings and allow public comment on the qualifications of recommended nominees submitted to the appointing authority. Written comment received by the board and any hearing record shall be transmitted to the appointing authority together with its recommendations. The board shall grant a preference to persons with prior judicial experience, and submit no fewer than three recommendations for each available judicial position.

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and expenses and provide adequate supporting staff and facilities. Hearing judges shall be paid the same salary as municipal court judges. The presiding judge shall be paid the same salary as a superior court judge.

(e) From among the members of the State Bar or retired judges, the board may appoint pro tempore judges to decide matters in the Hearing Department of the State Bar Court when a judge of the State Bar is unavailable to serve without undue delay to the proceeding. The board may set the qualifications, terms, and conditions of service for pro tempore judges and may, in its discretion, compensate some or all of them out of funds appropriated by the board for this purpose.

(f) The board may fix a date no later than September 1, 1989, on which all proceedings pending before the Hearing Department of the State Bar Court shall be decided by a judge or pro tempore judge appointed under this section. From and after that date, a judge or pro tempore judge appointed under this section shall hear every regulatory matter pending in the Hearing Department of the State Bar Court as to which the taking of testimony or offering of evidence at trial has not commenced, and when so assigned, shall sit as the sole adjudicator, except for rulings which are to be made by the presiding judge of the State Bar Court or referees of other departments of the State Bar Court.

(g) Any judge or pro tempore judge of the State Bar Court as well as any employee of the State Bar assigned to the State Bar Court shall have the same immunity which attaches to judges in judicial proceedings in this state. Nothing in this subdivision limits or alters the immunities accorded the State Bar, its officers and employees, or any judge or referee of the State Bar Court as they existed prior to January 1, 1989. This subdivision does not constitute a change in, but is cumulative with, existing law.

(h) Nothing in this section shall be construed to prohibit the board from appointing persons to serve without compensation to arbitrate fee disputes under Article 13 (commencing with Section 6200) of this chapter or to monitor the probation of a member of the State Bar, whether those appointed under Section 6079, as added by Chapter 1114 of the Statutes of 1986, serve in the State Bar Court or otherwise.

(i) Any retired judge or referee appointed under Section 6079, as added by Chapter 1114 of the Statutes of 1986, prior to July 1, 1989, or any other authority may continue on or after July 1, 1989, to exercise the duties and powers authorized by that section or of the referee's appointment as to any matter assigned to him or her unless the matter has been reassigned under subdivision (f).

(j) This section shall cease to be operative on November 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before November 1, 2000, deletes or extends that date.

SEC. 3. Section 6079.1 is added to the Business and Professions Code, to read:

6079.1. (a) The Supreme Court shall appoint a presiding judge of the State Bar Court. In addition, five hearing judges shall be appointed, two by the Supreme Court, one by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly, to efficiently decide any and all regulatory matters

pending before the Hearing Department of the State Bar Court. The presiding judge and all other judges of that department shall be appointed for a term of six years and may be reappointed for additional six-year terms. Any judge appointed under this section shall be subject to admonition, censure, removal, or retirement by the Supreme Court upon the same grounds as provided for judges of courts of record of this state.

(b) Judges of the State Bar Court appointed under this section shall not engage in the private practice of law. The State Bar Court shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. Each judge:

(1) Shall have been a member of the State Bar for at least five years.

(2) Shall not have any record of the imposition of discipline as an attorney in California or any other jurisdiction.

(3) Shall meet such other requirements as may be established by subdivision (d) of Section 12011.5 of the Government Code.

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge and submit recommendations to the appointing authority, unless otherwise directed by the appointing authority. The board shall hold hearings and allow public comment on the qualifications of recommended nominees submitted to the appointing authority. Written comment received by the board and any hearing record shall be transmitted to the appointing authority together with its recommendations. The board shall grant a preference to persons with prior judicial experience, and submit no fewer than three recommendations for each available judicial position.

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and expenses and provide adequate supporting staff and facilities. Hearing judges shall be paid the same salary as municipal court judges. The presiding judge shall be paid the same salary as a superior court judge.

(e) From among the members of the State Bar or retired judges, the board may appoint pro tempore judges to decide matters in the Hearing Department of the State Bar Court when a judge of the State Bar is unavailable to serve without undue delay to the proceeding. The board may set the qualifications, terms, and conditions of service for pro tempore judges and may, in its discretion, compensate some or all of them out of funds appropriated by the board for this purpose.

(f) The board may fix a date no later than September 1, 1989, on which all proceedings pending before the Hearing Department of the State Bar Court shall be decided by a judge or pro tempore judge appointed under this section. From and after that date, a judge or pro tempore judge appointed under this section shall hear every regulatory matter pending in the Hearing Department of the State

Bar Court as to which the taking of testimony or offering of evidence at trial has not commenced, and when so assigned, shall sit as the sole adjudicator, except for rulings which are to be made by the presiding judge of the State Bar Court or referees of other departments of the State Bar Court.

(g) Any judge or pro tempore judge of the State Bar Court as well as any employee of the State Bar assigned to the State Bar Court shall have the same immunity which attaches to judges in judicial proceedings in this state. Nothing in this subdivision limits or alters the immunities accorded the State Bar, its officers and employees, or any judge or referee of the State Bar Court as they existed prior to January 1, 1989. This subdivision does not constitute a change in, but is cumulative with, existing law.

(h) Nothing in this section shall be construed to prohibit the board from appointing persons to serve without compensation to arbitrate fee disputes under Article 13 (commencing with Section 6200) of this chapter or to monitor the probation of a member of the State Bar, whether those appointed under Section 6079, as added by Chapter 1114 of the Statutes of 1986, serve in the State Bar Court or otherwise.

(i) Any retired judge or referee appointed under Section 6079, as added by Chapter 1114 of the Statutes of 1986, prior to July 1, 1989, or any other authority may continue on or after July 1, 1989, to exercise the duties and powers authorized by that section or of the referee's appointment as to any matter assigned to him or her unless the matter has been reassigned under subdivision (f).

(j) This section shall become operative on November 1, 2000.

SEC. 4. Section 6085 of the Business and Professions Code is amended to read:

6085. Any person complained against shall be given fair, adequate, and reasonable notice and have a fair, adequate, and reasonable opportunity and right:

(a) To defend against the charge by the introduction of evidence.

(b) To receive any and all exculpatory evidence from the State Bar after the initiation of a disciplinary proceeding in State Bar Court, and thereafter when this evidence is discovered and available. This subdivision shall not require the disclosure of mitigating evidence.

(c) To be represented by counsel.

(d) To examine and cross-examine witnesses.

(e) To exercise any right guaranteed by the State Constitution or the United States Constitution, including the right against self-incrimination.

He or she shall also have the right to the issuance of subpoenas for attendance of witnesses to appear and testify or produce books and papers, as provided in this chapter.

SEC. 5. Section 6086.65 of the Business and Professions Code is amended to read:

6086.65. (a) There is a Review Department of the State Bar Court, which consists of the Presiding Judge of the State Bar Court,

one Lay Judge, and one Review Department Judge. The judges of the Review Department shall be nominated, appointed, and subject to discipline as provided by subdivision (a) of Section 6079.1, shall be qualified as provided by subdivision (b) of Section 6079.1, and shall be compensated as provided for the Presiding Judge by subdivision (d) of Section 6079.1. However, the Lay Judge, who shall be a person who has never been a member of the State Bar or admitted to practice law before any court in the United States, and the Review Department Judge may be appointed to, and paid as, positions occupying one-half the time and pay of the Presiding Judge. Candidates shall be rated and screened by the board as provided in subdivision (c) of Section 6079.1.

(b) The board may fix a date no later than September 1, 1989, on which all proceedings pending before the Review Department shall be decided by judges of the Review Department appointed under this section. The Review Department in existence on June 30, 1989, may continue on and after July 1, 1989, to exercise the duties and powers under prior Section 6086.6 as to any matter assigned to it prior to the date set by the board pursuant to this section.

(c) The Presiding Judge of the State Bar Court shall appoint an Executive Committee of the State Bar Court of no fewer than seven persons, including one person who has never been a member of the State Bar or admitted to practice law before any court in the United States. The Executive Committee may adopt rules of practice for the operation of the State Bar Court as provided in Section 6086.5.

(d) Any decision or order reviewable by the Review Department and issued by a judge of the State Bar Court appointed pursuant to Section 6079.1 may be reviewed only upon timely request of a party to the proceeding and not on the Review Department's own motion. Unless otherwise provided by a rule of practice or procedure approved by the Supreme Court, the party requesting review shall have the burden of showing one of the following:

(1) The Hearing Department did not proceed in the manner required by law.

(2) The findings of the Hearing Department are not supported by substantial evidence.

(3) The decision or recommendation of the Hearing Department is clearly erroneous.

(e) This section shall cease to be operative on November 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted after November 1, 2000, deletes or extends that date.

SEC. 6. Section 6086.65 is added to the Business and Professions Code, to read:

6086.65. (a) There is a Review Department of the State Bar Court, that consists of the Presiding Judge of the State Bar Court and two Review Department Judges appointed by the Supreme Court. The judges of the Review Department shall be nominated, appointed, and subject to discipline as provided by subdivision (a) of

Section 6079.1, shall be qualified as provided by subdivision (b) of Section 6079.1, and shall be compensated as provided for the Presiding Judge by subdivision (d) of Section 6079.1. However, the two Review Department Judges may be appointed to, and paid as, positions occupying one-half the time and pay of the Presiding Judge. Candidates shall be rated and screened by the board as provided in subdivision (c) of Section 6079.1.

(b) The board may fix a date no later than September 1, 1989, on which all proceedings pending before the Review Department shall be decided by judges of the Review Department appointed under this section. The Review Department in existence on June 30, 1989, may continue on and after July 1, 1989, to exercise the duties and powers under prior Section 6086.6 as to any matter assigned to it prior to the date set by the board pursuant to this section.

(c) The Presiding Judge of the State Bar Court shall appoint an Executive Committee of the State Bar Court of no fewer than seven persons, including one person who has never been a member of the State Bar or admitted to practice law before any court in the United States. The Executive Committee may adopt rules of practice for the operation of the State Bar Court as provided in Section 6086.5.

(d) Any decision or order reviewable by the Review Department and issued by a judge of the State Bar Court appointed pursuant to Section 6079.1 may be reviewed only upon timely request of a party to the proceeding and not on the Review Department's own motion. Unless otherwise provided by a rule of practice or procedure approved by the Supreme Court, the party requesting review shall have the burden of showing one of the following:

(1) The Hearing Department did not proceed in the manner required by law.

(2) The findings of the Hearing Department are not supported by substantial evidence.

(3) The decision or recommendation of the Hearing Department is clearly erroneous.

(e) This section shall become operative on November 1, 2000.

SEC. 7. Section 6095.1 is added to the Business and Professions Code, to read:

6095.1. (a) Beginning on April 1, 2000, and through March 31, 2001, the State Bar shall compile statistics indicating the number of complaints against attorneys, broken down to reflect the percentage of complaints brought against attorneys practicing as solo practitioners, in small law firms or partnerships, and in large law firms. The State Bar shall also compile statistics indicating the percentage of complaints that are investigated, the percentage of complaints that are prosecuted, and the outcomes of those prosecutions against solo practitioners, attorneys practicing in small law firms or partnerships, and attorneys practicing in large law firms. For the purposes of the study, agreements in lieu of discipline shall not be counted as prosecutions. Practicing attorneys shall provide

any information that is requested by the bar deemed necessary for the purpose of compiling the statistics. For purposes of this section, "small law firm" means a firm, partnership, association, corporation, or limited liability partnership that includes 10 or fewer attorneys.

(b) On or before June 30, 2001, the State Bar shall issue a written report to the Senate Committee on Judiciary and the Assembly Committee on Judiciary on procedures used in the disciplinary process to ensure that resources of the State Bar are used fairly and equitably in the investigation and prosecution of complaints against attorneys. In particular, the report shall focus on whether disciplinary proceedings are brought in disproportionate numbers against attorneys practicing as solo practitioners or in small law firms or partnerships, as compared to proceedings brought against attorneys practicing in large law firms. The report shall also describe any procedures in place or under consideration to correct any institutional bias and shall include a discussion of, and recommendations regarding, any additional changes to the discipline process that would make it more equitable. In particular, the State Bar shall consider disciplinary avenues other than the investigation and prosecution of complaints against attorneys. After issuing the report, the State Bar shall continue to compile and maintain statistics pursuant to subdivision (a), and shall make those statistics available to the public upon request.

(c) Procedures used in the disciplinary process shall ensure that resources of the State Bar are used fairly and equitably in the investigation and prosecution of complaints against all attorneys. Disciplinary proceedings shall not be brought in disproportionate numbers against attorneys practicing as solo practitioners or in small law firms or partnerships, as compared to proceedings brought against attorneys practicing in large law firms, unless the number of complaints against solo practitioners, or attorneys practicing in small law firms or partnerships, is commensurate with the higher number of disciplinary proceedings.

(d) The report of the State Bar prepared pursuant to this section shall not be used as a defense or mitigating factor in any disciplinary proceeding against an attorney.

CHAPTER 222

An act to add Section 12941.1 to the Government Code, relating to employment.

[Approved by Governor August 2, 1999. Filed with Secretary of State August 2, 1999.]

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

SECTION 1. The Legislature hereby finds and declares its support of the following pronouncements made by the California Supreme Court in Stevenson v. Superior Court (1997) 16 Cal.4th 880:

(a) "... the practice of age discrimination, like other invidious forms of discrimination, 'foments domestic strife and unrest' in the workplace ... making for a more stressful and ultimately less productive work environment ... ."

(b) "[T]here can be little doubt that the FEHA's express policy condemning employment discrimination against older workers is one that benefits the public at large. Because average life expectancy has risen to more than 80 years, most California residents either are now or will become over-40 employees, thus creating an extraordinarily broad class of potential victims of age discrimination in employment ... ."

(c) "[T]he pernicious effects of age discrimination in employment are not confined to employees who are its immediate targets. As the Legislature has recognized in Unemployment Insurance Code section 2070, discrimination against older workers violates the public policy that '[an employee's skills and potential] should be used to [their] fullest extent,' thereby depriving society at large of the benefit of valuable human resources ... ."

(d) "[T]he FEHA's policy against age discrimination in employment is ... similar in important ways to the policies against race and sex discrimination ... . Like race and sex discrimination, age discrimination violates the basic principle that each person should be judged on the basis of individual merit, rather than by reference to group stereotypes ... ."

(e) "Age, like race and sex, is the product of the workings of nature rather than the individual's free choice; once acquired, the status of being over 40 is as permanent and immutable as race or sex. Age discrimination attacks the individual's sense of self-worth in much the same fashion as race or sex discrimination. Indeed, age discrimination (or 'ageism,' as it is sometimes called) has been defined as 'a systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this with skin color and gender ... .' "

SEC. 2. Section 12941.1 is added to the Government Code, to read:

12941.1. The Legislature hereby declares its rejection of the court of appeal opinion in Marks v. Loral Corp. (1997) 57 Cal.App.4th 30, and states that the opinion does not affect existing law in any way, including, but not limited to, the law pertaining to disparate treatment. The Legislature declares its intent that the use of salary as the basis for differentiating between employees when terminating employment may be found to constitute age discrimination if use of that criterion adversely impacts older workers as a group, and further

declares its intent that the disparate impact theory of proof may be used in claims of age discrimination. The Legislature further reaffirms and declares its intent that the courts interpret the state's statutes prohibiting age discrimination in employment broadly and vigorously, in a manner comparable to prohibitions against sex and race discrimination, and with the goal of not only protecting older workers as individuals, but also of protecting older workers as a group, since they face unique obstacles in the later phases of their careers. Nothing in this section shall limit the affirmative defenses traditionally available in employment discrimination cases including, but not limited to, those set forth in Section 7286.7 of Title 2 of the California Code of Regulations.

CHAPTER 223

An act to amend Section 3744 of the Public Resources Code, relating to geothermal resources.

[Approved by Governor August 23, 1999. Filed with Secretary of State August 24, 1999.]

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

SECTION 1. Section 3744 of the Public Resources Code is amended to read:

3744. (a) Within 30 days from the date of service of an order made pursuant to Section 3743, the owner or operator shall commence in good faith the work ordered and continue it until completion. If the work has not been commenced and continued to completion, the supervisor shall appoint necessary agents who shall enter the premises and perform the work. An accurate account of the expenditures shall be kept. Any amount so expended shall constitute a lien against the real or personal property of the owner or operator upon which the work is done and the lien shall have the force, effect, and priority of a judgment lien pursuant to Section 3772.

(b) Notwithstanding Sections 3741, 3743, or 3755, if the supervisor determines that an emergency exists, the supervisor may make formal or emergency orders or undertake any other action that the supervisor determines to be necessary for the protection of life, health, property, or natural resources.

CHAPTER 224

An act to amend Sections 15275 and 15278 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 23, 1999. Filed with Secretary of State August 24, 1999.]

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

SECTION 1. Section 15275 of the Vehicle Code is amended to read:

15275. (a) No person may operate a commercial motor vehicle described in this chapter unless that person has in his or her possession a valid commercial driver's license for the appropriate class, and an endorsement issued by the department to permit the operation of the vehicle unless exempt from the requirement to obtain an endorsement pursuant to subdivision (b) of Section 15278.

(b) An endorsement to drive vehicles specified in this article shall be issued only to applicants qualified by examinations prescribed by the department and that meet the minimum standards established in Part 383 of Title 49 of the Code of Federal Regulations.

(c) The department may deny, suspend, revoke, or cancel an endorsement to drive vehicles specified in this article when the applicant does not meet the qualifications for the issuance or retention of the endorsement.

SEC. 2. Section 15278 of the Vehicle Code is amended to read:

15278. (a) A driver is required to obtain an endorsement issued by the department to operate any commercial motor vehicle that is any of the following:

(1) A double trailer.

(2) A passenger transportation vehicle, which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle when designed, used, or maintained to carry more than 10 persons including the driver.

(3) A tank vehicle.

(4) A vehicle carrying hazardous materials that is required to display placards or markings pursuant to Section 27903 or that is hauling hazardous waste, as defined in Sections 25115 and 25117 of the Health and Safety Code, unless the driver is exempt from the endorsement requirement as provided in subdivision (b). This paragraph does not apply to either of the following:

(A) Any person operating an implement of husbandry who is not required to obtain a driver's license under this code.

(B) Any person operating a vehicle transporting asphalt or coal tar pitch at a temperature that requires the display of a marking on the vehicle pursuant to Section 27903 and that is described and classified by the United States Department of Transportation as "elevated temperature liquid n.o.s. Division 9."

(b) This section does not apply to any person exempted pursuant to Section 25163 of the Health and Safety Code, to any person operating a vehicle in an emergency situation at the direction of a peace officer pursuant to Section 2800, or to a driver issued a

restricted firefighter's license and driving a vehicle operated for the purpose of hauling compressed air tanks for breathing apparatus that do not exceed 2,500 pounds.

CHAPTER 225

An act to add Section 83111.5 to the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 1999. Filed with Secretary of State August 24, 1999.]

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

SECTION 1. Section 83111.5 is added to the Government Code, to read:

83111.5. The commission shall take no action to implement this title that would abridge constitutional guarantees of freedom of speech, that would deny any person of life, liberty, or property without due process of law, or that would deny any person the equal protection of the laws.

SEC. 2. The Legislature finds and declares that the provisions of this act further the purpose of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 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 ensure protection of rights under the First and Fourteenth Amendments to the United States Constitution in proceedings before the Fair Political Practices Commission without delay, it is necessary that this act take effect immediately.

CHAPTER 226

An act to add Section 14085.9 to the Welfare and Institutions Code, relating to health, and making an appropriation therefor.

[Approved by Governor August 23, 1999. Filed with Secretary of State August 24, 1999.]

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

SECTION 1. Section 14085.9 is added to the Welfare and Institutions Code, to read:

14085.9. (a) Except as provided in subdivision (g), each hospital contracting to provide services under this article that meets the criteria contained in the state medicaid plan for disproportionate share hospital status shall be eligible to negotiate with the commission for distributions from the Small and Rural Hospital Supplemental Payments Fund, which is hereby created and, notwithstanding Section 13340 of the Government Code, is continuously appropriated for the purposes specified in this section. All distributions from the fund shall be pursuant to this section.

(b) (1) To the extent permitted by federal law, the department shall administer the fund in accordance with this section.

(2) The money in this fund shall be available for expenditure by the department for the purposes of this section, subject to approval through the regular budget process.

(c) The fund shall include all of the following:

(1) Subject to subdivision (*l*), all public funds transferred by public agencies to the department for deposit in the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws. These transfers shall constitute local government financial participation in Medi-Cal as permitted under Section 1902(a)(2) of the Social Security Act (Title 42 U.S.C. Sec. 1396a(a)(2)) and other applicable federal medicaid laws.

(2) Subject to subdivision (*l*), all private donated funds transferred by private individuals or entities for deposit in the fund as permitted under applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Interest that accrues on amounts in the fund.

(d) Amounts in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under this section.

(e) Distributions from the fund shall be supplemental to any and all other amounts that hospitals would have received under the contracting program, and under the state medicaid plan, including contract rate increases and supplemental payments and payment adjustments under distribution programs relating to disproportionate share hospitals.

(f) Distributions from the fund shall not serve as the state's payment adjustment program under Section 1923 of the Social Security Act (42 U.S.C. Sec. 1396r-4). To the extent permitted by federal law, and except as otherwise provided in this section, distributions from the fund shall not be subject to requirements

contained in or related to Section 1923 of the Social Security Act (42 U.S.C. Sec. 1396r-4). Distributions from the fund shall be supplemental contract payments and may be structured on any federally permissible basis, as negotiated between the commission and the hospital.

(g) In order to qualify for distributions from the fund, a hospital shall meet all of the following criteria:

(1) Be a contracting hospital under this article.

(2) Satisfy the state medicaid plan criteria referred to in subdivision (a).

(3) Be a small and rural hospital as defined in Section 124840 of the Health and Safety Code.

(4) Be a licensed provider of standby emergency services as described in Section 70649 and following of Title 22 of the California Code of Regulations.

(5) Be able to demonstrate a purpose for additional funding under the selective provider contracting program with proposals relating to health care services that are made available, or will be made available, to Medi-Cal beneficiaries.

(6) Be determined by the California Medical Assistance Commission to be a hospital that provides an important community service that otherwise would not be provided in the community.

(h) (1) The department shall seek federal financial participation for expenditures made from the fund to the full extent permitted by federal law.

(2) The department shall promptly seek any necessary federal approvals regarding this section.

(i) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in following fiscal years.

(j) For purposes of this section, "fund" means the Small and Rural Hospital Supplemental Payments Fund.

(k) (1) Any public agency transferring amounts to the fund, as specified in paragraph (1) of subdivision (c), may for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public funds or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(2) Notwithstanding paragraph (1), a public agency may transfer to the fund only those moneys that have a source that will qualify for federal financial participation under the provisions of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or other applicable federal medicaid laws.

(*l*) Public funds transferred pursuant to paragraph (1) of subdivision (c), and private donated funds transferred pursuant to paragraph (2) of subdivision (c), shall be deposited into the fund, and expended pursuant to this section. The director may accept only those funds that are certified by the transferring entity as qualifying

for federal financial participation under the terms of the Medicaid Voluntary Contributions and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) and may return any funds transferred in error.

(m) The department may adopt emergency regulations for the purposes of this section.

(n) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup that federal disallowance from the hospital in any manner authorized by law or contract.

CHAPTER 227

An act to amend Sections 14006.3 and 14006.4 of the Welfare and Institutions Code, relating to health.

[Approved by Governor August 23, 1999. Filed with Secretary of State August 24, 1999.]

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

SECTION 1. It is the intent of the Legislature to update existing law so that the State Department of Health Services and each nursing facility are required to provide all incoming nursing facility residents and their representatives with an accurate summary of the law governing Medi-Cal reimbursement for nursing facility care.

SEC. 2. Section 14006.3 of the Welfare and Institutions Code is amended to read:

14006.3. The department, at the time of application or the assessment pursuant to Section 14006.6, and any nursing facility enrolled as a provider in the Medi-Cal program, prior to admitting any person, shall provide a clear and simple statement, in writing, in a form and language specified by the department, to that person, and that person's spouse, legal representative, or agent, if any, that explains the resource and income requirements of the Medi-Cal program including, but not limited to, certain exempt resources, certain protections against spousal impoverishment, and certain circumstances under which an interest in a home may be transferred without affecting Medi-Cal eligibility.

SEC. 3. Section 14006.4 of the Welfare and Institutions Code is amended to read:

14006.4. (a) The statement required by Sections 14006.2 and 14006.3 shall be in the following form:

"NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY

If you or your spouse is in or is entering a nursing facility, read this important message!

You or your spouse do not have to use all your resources, such as savings, before Medi-Cal might help pay for all or some of the costs of a nursing facility.

You should be aware of the following to take advantage of these provisions of the law:

UNMARRIED RESIDENT

An unmarried resident is financially eligible for Medi-Cal benefits if he or she has less than (insert amount of individual's resource allowance) in available resources. A home is an exempt resource and is not considered against the resource limit, as long as the resident states on the Medi-Cal application that he or she intends to return home. Clothes, household furnishings, irrevocable burial plans, burial plots, and an automobile are examples of other exempt resources.

If an unmarried resident is financially eligible for Medi-Cal reimbursement, he or she is allowed to keep from his or her monthly income a personal allowance of (insert amount of personal needs allowance) plus the amount of health insurance premiums paid monthly. The remainder of the monthly income is paid to the nursing facility as a monthly deductible called the "Medi-Cal share of cost."

MARRIED RESIDENT

If one spouse lives in a nursing facility, and the other spouse does not live in a nursing facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than (insert amount of Community Spouse Resource Allowance plus individual's resource allowance) in available assets. The couple's home will not be counted against this (insert amount of Community Spouse Resource Allowance plus individual's resource allowance), as long as one spouse or a dependent relative, or both, lives in the home, or the spouse in the nursing facility states on the Medi-Cal application that he or she intends to return to the couple's home to live.

If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or (insert amount of Minimum Monthly Maintenance Needs Allowance), whichever is greater. Of the couple's remaining monthly income, the spouse in the nursing facility is allowed to keep a personal allowance of (insert amount of personal needs allowance) plus the amount of health insurance premiums paid monthly. The remaining money, if any,

generally must be paid to the nursing facility as the Medi-Cal share of cost. The Medi-Cal program will pay remaining nursing facility costs.

Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge that will allow the at-home spouse to retain additional resources or income. Such an order can allow the couple to retain more than (insert amount of Community Spouse Resource Allowance plus individual's resource allowance) in available resources, if the income that could be generated by the retained resources would not cause the total monthly income available to the at-home spouse to exceed (insert amount of Monthly Maintenance Needs Allowance). Such an order also can allow the at-home spouse to retain more than (insert amount of Monthly Maintenance Needs Allowance) in monthly income, if the extra income is necessary "due to exceptional circumstances resulting in significant financial duress."

An at-home spouse also may obtain a court order to increase the amount of income and resources that he or she is allowed to retain, or to transfer property from the spouse in the nursing facility to the at-home spouse. You should contact a knowledgeable attorney for further information regarding court orders.

The paragraphs above do not apply if both spouses live in a nursing facility and neither previously has been granted Medi-Cal eligibility. In this situation, the spouses may be able to hasten Medi-Cal eligibility by entering into an agreement that divides their community property. The advice of a knowledgeable attorney should be obtained prior to the signing of this type of agreement.

Note: For married couples, the resource limit ((insert amount of Community Spouse Resource Allowance plus individual's resource allowance) in (insert current year)) and income limit ((insert amount of Minimum Monthly Maintenance Needs Allowance) in (insert current year)) generally increase a slight amount on January 1 of every year.

TRANSFER OF HOME FOR BOTH A MARRIED AND AN UNMARRIED RESIDENT

A transfer of a property interest in a resident's home will not cause ineligibility for Medi-Cal reimbursement if either of the following conditions is met:

(a) At the time of transfer, the recipient of the property interest states in writing that the resident would have been allowed to return to the home at the time of the transfer, if the resident's medical condition allowed him or her to leave the nursing facility. This provision shall only apply if the home has been considered an exempt resource because of the resident's intent to return home.

(b) The home is transferred to one of the following individuals:

(1) The resident's spouse.

(2) The resident's minor or disabled child.

(3) A sibling of the resident who has an equity interest in the home, and who resided in the resident's home for at least one year immediately before the resident began living in institutions.

(4) A son or daughter of the resident who resided in the resident's home at least two years before the resident began living in institutions, and who provided care to the resident that permitted the resident to remain at home longer.

This is only a brief description of the Medi-Cal eligibility rules, for more detailed information, you should call your county welfare department. You will probably want to consult with the local branch of the state long-term care ombudsman, an attorney, or a legal services program for seniors in your area.

I have read the above notice and have received a copy.
Dated: _____ Signature: _____"

(b) The statement required by subdivision (a) shall be printed in at least 10-point type, shall be clearly separate from any other document or writing, and shall be signed by the person to be admitted and that person's spouse, and legal representative, if any.

(c) Any nursing facility that willfully fails to comply with this section shall be subject to a class "B" citation, as defined by Section 1424 of the Health and Safety Code.

(d) The department may revise this statement as necessary to maintain its consistency with state and federal law.

CHAPTER 228

An act to amend Section 18724 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 23, 1999. Filed with Secretary of State August 24, 1999.]

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

SECTION 1. Section 18724 of the Revenue and Taxation Code is amended to read:

18724. (a) This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes that date.

(b) If the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2001, or the adjusted amount specified in subdivision (c) for any subsequent taxable year,

as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 2002, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

CHAPTER 229

An act to amend Section 12517.3 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. Section 12517.3 of the Vehicle Code is amended to read:

12517.3. (a) (1) Applicants for an original certificate to drive a schoolbus, school pupil activity bus, youth bus, or general public paratransit vehicle shall be fingerprinted by the Department of the California Highway Patrol, on a form provided or approved by the Department of the California Highway Patrol for submission to the Department of Justice, utilizing the Applicant Expedite Service or an electronic fingerprinting system.

(2) Applicant fingerprint forms shall be processed and returned to the office of the Department of the California Highway Patrol

from which they originated not later than 15 working days from the date on which the fingerprint forms were received by the Department of Justice, unless circumstances, other than the administrative duties of the Department of Justice, warrant further investigation.

(3) Applicant fingerprints that are submitted by utilizing an electronic fingerprinting system shall be processed and returned to the appropriate office of the Department of the California Highway Patrol within three working days.

(b) (1) Notwithstanding subdivision (a), an applicant for an original certificate to drive a schoolbus, school pupil activity bus, youth bus, or general public paratransit vehicle may be fingerprinted by a public law enforcement agency, a school district, or a county office of education utilizing an electronic fingerprinting system with terminals managed by the Department of Justice.

(2) The Department of Justice shall provide the fingerprint information processed pursuant to this subdivision to the appropriate office of the Department of the California Highway Patrol within three working days of receipt of the information.

(3) Applicants for an original certificate to drive an ambulance shall submit a completed fingerprint card to the department.

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 that applicants for original certificates to drive schoolbuses, school pupil activity buses, youth buses, and general public transit vehicles can be effectively fingerprinted and processed at the earliest possible time in order to help protect the safety of passengers on these vehicles, it is necessary that this act take effect immediately.

CHAPTER 230

An act to amend Sections 11704.5 and 11713.1 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. Section 11704.5 of the Vehicle Code is amended to read:

11704.5. (a) Except as provided in subdivision (d), every person who applies for a dealer's license pursuant to Section 11701 for the purpose of transacting sales of used vehicles on a retail or wholesale

basis only shall be required to take and successfully complete a written examination prepared and administered by the department before a license may be issued. The examination shall include, but need not be limited to, all of the following laws and subjects:

(1) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(2) Advertising.

(3) Odometers.

(4) Vehicle licensing and registration.

(5) Branch locations.

(6) Offsite sales.

(7) Unlawful dealer activities.

(8) Handling, completion, and disposition of departmental forms.

(b) Prior to the first taking of an examination under subdivision (a), every applicant shall successfully complete a preliminary educational program of not less than four hours. The program shall address, but not be limited to, all of the following topics:

(1) Chapter 2B (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to motor vehicle sales finance.

(2) Motor vehicle financing.

(3) Truth in lending.

(4) Sales and use taxes.

(5) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(6) Advertising.

(7) Odometers.

(8) Vehicle licensing and registration.

(9) Branch locations.

(10) Offsite sales.

(11) Unlawful dealer activities.

(12) Air pollution control requirements.

(13) Regulations of the Bureau of Automotive Repair.

(14) Handling, completion, and disposition of departmental forms.

(c) Instruction may be provided by generally accredited educational institutions, private vocational schools, correspondence institutions, and educational programs and seminars offered by professional societies, organizations, trade associations, and other educational and technical programs that meet the requirements of this section or by the department.

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

(1) An applicant for a new vehicle dealer's license or any employee of that dealer.

(2) A person who holds a valid license as a dealer at the time of application.

(3) A person who held a license as a dealer during the 36 months immediately preceding the date of the receipt of the application by the department.

(4) A person who holds a valid license as an automobile dismantler, an employee of that dismantler, or an applicant for an automobile dismantler's license.

(5) An applicant for a motorcycle only dealer's license or any employee of that dealer.

(6) An applicant for a trailer only dealer's license or any employee of that dealer.

SEC. 2. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, emission testing fees not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars ($45).

(c) Exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars ($45) for the document preparation charge and not to exceed fifty dollars ($50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating or more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in subdivision (b) of Section 18010 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as "starting at," "from," "beginning as low as," or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) Advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms "invoice," "dealer's invoice," "wholesale price," or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a "commercial purchaser" means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) Advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee

received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

CHAPTER 231

An act to amend Section 647 of the Penal Code, relating to privacy.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug,

controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(k) (1) Any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, or camcorder, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments.

(2) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another,

identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous conviction shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court may order a person's privilege to operate a motor vehicle restricted, for not more than six months, to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may also allow the person to drive in that person's scope of employment.

SEC. 2. 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.

CHAPTER 232

An act to amend Section 9250.14 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. Section 9250.14 of the Vehicle Code is amended to read:

9250.14. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration 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.

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller is continuously appropriated, without regard to fiscal years, for the administrative costs of the Controller, and 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.

(c) Except as otherwise provided in this subdivision, money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local police and prosecutors to deter, investigate, and prosecute vehicle theft crimes. In any county with a population of 200,000 or less, the money shall be expended exclusively for those vehicle theft crime programs and for the prosecution of crimes involving driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 or subdivision

(c) of Section 192 of the Penal Code, or any combination of those crimes.

(d) No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds, nor for any purpose not authorized under this section.

(e) Any funds received by a county prior to January 1, 2000, pursuant to this section that are not expended to deter, investigate, or prosecute crimes pursuant to subdivision (c) shall be returned to the Controller, for deposit in the Motor Vehicle Account in the State Transportation Fund. Those funds received by a county after January 1, 2000, shall be expended in accordance with this section.

(f) Each county that has adopted or adopts a resolution pursuant to subdivision (a) shall submit, on or before the 13th day following the end of each quarter, a quarterly expenditure and activity report to the designated statewide Vehicle Theft Investigation and Apprehension Coordinator in the Department of the California Highway Patrol. The coordinator shall compile all county reports and prepare an annual report for dissemination to the Legislature and participating counties.

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

CHAPTER 233

An act to amend Section 217 of the Welfare and Institutions Code, relating to personal property.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. Section 217 of the Welfare and Institutions Code is amended to read:

217. (a) The board of supervisors of any county or the governing body of any city may by ordinance provide that any personal property with a value of not more than five hundred dollars ($500) in the possession of the sheriff of the county or in the possession of the police department of the city which have been unclaimed for a period of at least 90 days may, instead of being sold at public auction to the highest bidder pursuant to the provisions of Section 2080.5 of the Civil Code, be turned over to the probation officer, to the welfare department of the county, or to any charitable or nonprofit organization which is authorized under its articles of incorporation to participate in a program or activity designed to prevent juvenile delinquency and which is exempt from income taxation under

federal or state law, or both, for use in any program or activity designed to prevent juvenile delinquency.

(b) Before any property subject to this section is turned over to the probation officer, to the welfare department of the county, or to any charitable or nonprofit organization, the police department or sheriff's department shall notify the owner, if his or her identity is known or can be reasonably ascertained, that it possesses the property, and where the property may be claimed. The owner may be notified by mail, telephone, or by means of a notice published in a newspaper of general circulation which it determines is most likely to give notice to the owner of the property.

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.

CHAPTER 234

An act to amend Section 51553 of the Education Code, relating to instruction.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. Section 51553 of the Education Code is amended to read:

51553. (a) All public elementary, junior high, and senior high school classes that teach sex education and discuss sexual intercourse shall emphasize that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually. All material and instruction in classes that teach sex education and discuss sexual intercourse shall be age appropriate.

(b) All sex education courses that discuss sexual intercourse shall also satisfy the following criteria:

(1) (A) Factual information presented in course material and instruction shall be medically accurate and objective.

(B) For purposes of this section, the following definitions apply:

(i) "Factual information" includes, but is not limited to, medical, psychiatric, psychological, empirical, and statistical statements.

(ii) "Medically accurate" means verified or supported by research conducted in compliance with scientific methods and published in peer-review journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the Centers for Disease Control and Prevention.

(2) Course material and instruction shall stress that abstinence is the only contraceptive method which is 100 percent effective, and that all other methods of contraception carry a risk of failure in preventing unwanted teenage pregnancy. Statistics based on the latest medical information shall be provided to pupils citing the failure and success rates of condoms and other contraceptives in preventing pregnancy.

(3) Course material and instruction shall stress that sexually transmitted diseases are serious possible hazards of sexual intercourse. Pupils shall be provided with statistics based on the latest medical information citing the failure and success rates of condoms in preventing AIDS and other sexually transmitted diseases.

(4) Course material and instruction shall include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse outside of marriage and the consequences of unwanted adolescent pregnancy.

(5) Course material and instruction shall stress that pupils should abstain from sexual intercourse until they are ready for marriage.

(6) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(7) Course material and instruction shall advise pupils of the laws pertaining to their financial responsibility to children born in and out of wedlock.

(8) Course material and instruction shall advise pupils that it is unlawful for males or females of any age to have sexual relations with males or females under the age of 18 years to whom they are not married, pursuant to Section 261.5 of the Penal Code.

(9) Course material and instruction shall emphasize that the pupil has the power to control personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control, and ethical considerations, such as respect for oneself and others.

(10) Course material and instruction shall teach pupils to not make unwanted physical and verbal sexual advances, how to say "no" to unwanted sexual advances, and shall include information about sexual assault, verbal, physical, and visual, including, but not limited to, nonconsensual sexual advances, nonconsensual physical sexual contact, and rape by an acquaintance, commonly referred to as "date rape." This course material and instruction shall contain methods of preventing sexual assault by an acquaintance, including exercising good judgment and avoiding behavior that impairs good judgment, and shall also encourage youth to resist negative peer pressure. This

course material and instruction also shall inform pupils of the potential legal consequences of sexual assault by an acquaintance. Specifically, pupils shall be advised that it is unlawful to touch an intimate part of another person, as specified in subdivision (d) of Section 243.4 of the Penal Code.

(11) Course materials and instruction shall be free of racial, ethnic, and gender biases.

(c) All sex education courses that discuss sexual intercourse shall teach pupils that it is wrong to take advantage of, or to exploit, another person.

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.

CHAPTER 235

An act to add Section 2991 to the Civil Code, relating to motor vehicle lease contracts.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. Section 2991 is added to the Civil Code, to read:

2991. Any prospective assignee that provides a lessor under a lease contract with any preprinted form for use as a lease contract shall, upon the request of a lessor, provide the lessor with a Spanish language translation of the preprinted form.

SEC. 2. Section 1 of this act shall become operative on January 1, 2001.

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.

CHAPTER 236

An act to amend Section 15630 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. 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 that 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 who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), 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 or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, 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. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 237

An act relating to the Junction School District, and making an appropriation therefor.

[Approved by Governor August 25, 1999. Filed with Secretary of State August 26, 1999.]

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

SECTION 1. Notwithstanding subdivision (b) of Section 44 of Chapter 204 of the Statutes of 1996 or any other provision of law, the Junction School District may be reimbursed for expenditures from funds appropriated pursuant to subdivision (a) of Section 44 of Chapter 204 of the Statutes of 1996, regardless of whether the use of the funds was proposed or approved by a schoolsite council, schoolwide advisory group, or school support group prior to expenditure.

SEC. 2. The Legislature finds and declares that, because of the unique circumstances applicable to Junction School District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

CHAPTER 238

An act to add Section 116.5 to the Insurance Code, relating to automotive lubricant product warranties.

[Approved by Governor August 26, 1999. Filed with Secretary of State August 27, 1999.]

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

SECTION 1. Section 116.5 is added to the Insurance Code, to read:

116.5. Notwithstanding Section 116, an agreement promising repair or replacement of a motor vehicle or part thereof subsequent to a mechanical or electrical breakdown, where the repair or replacement is at either no cost or a reduced cost for the agreement holder, shall not constitute automobile insurance if the obligor is a

manufacturer of motor vehicle lubricants, treatments, fluids, or additives, provided that all of the following apply:

(a) The agreement covers only parts directly in contact with the lubricant, treatment, fluid, or additive that is manufactured by the obligor, or parts mechanically connected to those parts.

(b) No separately stated consideration is paid for the agreement by the agreement holder.

(c) The agreement is in writing and includes all of the following:

(1) A disclosure in 10-point type or larger that reads as follows: "This agreement is a product warranty and is not insurance. It is not subject to state insurance laws but is subject to state laws concerning warranties. You must use the product as instructed in order to receive the benefit of the warranty."

(2) A disclosure of the year in which the obligor began doing business in this state.

(3) A toll-free telephone number for the agreementholder to call should there be a question or problem about the lubricant, treatment, fluids, or additives or the warranty.

CHAPTER 239

An act to amend Section 8655.5 of the Government Code, relating to community warning systems.

[Approved by Governor August 26, 1999. Filed with Secretary of State August 27, 1999.]

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

SECTION 1. Section 8655.5 of the Government Code is amended to read:

8655.5. (a) As used in this section, the following terms have the following meanings:

(1) "Community warning program" means any broadcast or notification program conducted by or at the direction of a public agency of a county of the ninth class that is intended to facilitate the agency's ability to warn residents of an actual or a threatened hazardous materials release or other emergency or natural disaster, and to coordinate the dissemination of information through various media and other warning devices of any nature, including, but not limited to, sirens, television, radio, 911 service, and public address systems.

(2) "Community warning system" means any combination of equipment, hardware, and software used in a community warning program by a county of the ninth class.

(3) "Donor organization" means a California nonprofit public benefit corporation, and its officers, directors, employees, members,

and contributors, that has donated in whole or in part a community warning system to a county of the ninth class.

(b) A donor organization is immune from suit and claims of liability for any injury arising out of the design, development, installation, maintenance, operation, and use of a community warning program or community warning system. This section shall be cumulative with, and does not affect in any way, any immunity from suit and claims of liability, privileges, defenses, or exemptions otherwise enjoyed by any person or entity. This immunity shall not apply to the management, operation, or maintenance of a community warning system by a donor organization after a donor organization donates a community warning system to a county of the ninth class, but shall apply to (1) the installation by a donor organization of alert receiver equipment and initiation box equipment, or (2) the operation or maintenance, or both, by a donor organization of stationary terminal equipment and related initiation box equipment, and alert receiver equipment, or both (1) and (2), for communications and operations, provided that the installation, operation, or maintenance, or all of these, by the donor organization is undertaken without compensation, and in accordance with the direction of, or under contract with, a county of the ninth class, whether before or after the donation.

(c) (1) Except as expressly provided in subdivision (b), this section does not negate or impair any duty or cause of action, whether civil or criminal, against a donor organization.

(2) Without limiting the generality of paragraph (1), this section is not intended to, nor shall it be construed to, (A) relieve the manufacturer, designer, developer, installer, or supplier of equipment or software for a community warning system from any obligation or liability under any applicable statute or rule of law, or (B) relieve any donor organization from any liability for the intentional wrongful use of a community warning system or any part thereof.

(3) Notwithstanding any other provision of this section or of any law relating to indemnity, joint and several liability, or several liability, no claim for contribution or indemnity arises against a donor organization based on the design, development, installation, maintenance, operation, or use of a community warning system for which the donor organization is otherwise immune under the section.

(4) Notwithstanding any other provision of this section or of any law relating to indemnity, joint and several liability, or several liability, no person who is otherwise liable for damages shall be entitled to seek or assert any allocation of any percentage of fault or liability for the purpose of the reduction of damages for personal injury, property damage, or wrongful death, based on the participation of a donor organization or a county of the ninth class or

its officials or employees in the design, development, installation, maintenance, operation, or use of a community warning system.

CHAPTER 240

An act to amend Section 42815 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor August 26, 1999. Filed with Secretary of State August 27, 1999.]

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

SECTION 1. Section 42815 of the Food and Agricultural Code is amended to read:

42815. This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 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.

CHAPTER 241

An act to amend Section 7735 of, and to repeal Sections 7622.3 and 7651 of, the Business and Professions Code, relating to funeral directors and embalmers.

[Approved by Governor August 26, 1999. Filed with Secretary of State August 27, 1999.]

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

SECTION 1. Section 7622.3 of the Business and Professions Code is repealed.

SEC. 2. Section 7651 of the Business and Professions Code is repealed.

SEC. 3. Section 7735 of the Business and Professions Code is amended to read:

7735. No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract, or plan, hereinafter referred to as "contract," requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms; provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in Section 7737. The income from the corpus may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee, to be determined by the program, and to establish a reserve of not to exceed 10 percent of the corpus as a revocation fee in the event of cancellation on the part of the beneficiary. In addition to annual fees and reserves authorized by this section, a trustee may, at its election, pay taxes on the earnings on any trust pursuant to Section 17760.5 of the Revenue and Taxation Code. In no event, however, shall taxes paid on the earnings of any trust be considered part of the fees or reserves authorized by this section.

None of the trust corpus shall be used for payment of any commission nor shall any of the trust corpus be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust.

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.

CHAPTER 242

An act relating to foreign trade.

[Approved by Governor August 26, 1999. Filed with Secretary of State August 27, 1999.]

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

SECTION 1. (a) Notwithstanding Section 7550.5 of the Government Code, the Trade and Commerce Agency, with input from the academic, private, and public sectors, including the California Research Bureau of the California State Library, the State Auditor, and the Legislative Analyst, shall review the state's international trade programs and prepare and submit to the Governor and the Legislature both a report of its findings and a plan for improving the coordination, cost effectiveness, and capability of the state's international trade programs to increase the state's international competitiveness. The review shall include all of the following:

(1) An in-depth analysis of the relative viability and cost effectiveness of the state's current and future international trade offices as trade promotion tools.

(2) Consideration and analysis of the comparative cost effectiveness of alternative methods of international trade promotion, such as targeted trade missions.

(3) Recommendations for removing international trade barriers as part of improving trade relations with the state's international trading partners.

(b) The report and plan required by subdivision (a) shall be submitted to the Governor and the Legislature within 90 days of the effective date of this act.

(c) The Trade and Commerce Agency shall not expend any amount in excess of fifty thousand dollars ($50,000) for the one-time, additional costs that may result from the implementation of this act.

CHAPTER 243

An act to amend Section 14672 of the Government Code, relating to state property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1999. Filed with Secretary of State August 27, 1999.]

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

SECTION 1. Section 14672 of the Government Code is amended to read:

14672. Notwithstanding Section 14670, the Director of General Services with the consent of the Department of Corrections, may let to the City of Vacaville for a public purpose, for a period not to exceed 40 years, real property that belongs to the state and that is retained by the state primarily to provide a peripheral buffer area, or zone,

between real property upon which is located the medical facility and adjacent real property, where the director deems that letting is in the best interests of the state.

The lease provided for by this section may be renewed, upon its expiration, for an additional period not to exceed 40 years.

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:

An existing agreement regarding the provision of municipal utilities between the Department of Corrections and the City of Vacaville expires on December 31, 1999. In order to finalize the new master agreement authorized by this act prior to the expiration of the existing agreement, and to prevent the interruption of these utilities, it is necessary that this bill take effect immediately.

CHAPTER 244

An act to add Title 1.3C (commencing with Section 1748.30) to Part 4 of Division 3 of the Civil Code, relating to debit cards.

[Approved by Governor August 26, 1999. Filed with Secretary of State August 27, 1999.]

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

SECTION 1. Title 1.3C (commencing with Section 1748.30) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.3C. DEBIT CARDS

1748.30. For purposes of this title, the following definitions shall apply:

(a) "Accepted debit card" means any debit card which the debit cardholder has requested and received or has signed, or has used, or has authorized another person to use, for the purpose of obtaining money, property, labor, or services. Any debit card issued in renewal of, or in substitution for, an accepted debit card becomes an accepted debit card when received by the debit cardholder, whether the debit card is issued by the same or by a successor card issuer.

(b) "Account" means a demand deposit (checking), savings, or other consumer asset account, other than an occasional or incidental credit balance in a credit plan, established primarily for personal, family, or household purposes.

(c) "Adequate notice" has the same meaning as found in subdivision (k) of Section 1747.02.

(d) "Debit card" means an accepted debit card or other means of access to a debit cardholder's account that may be used to initiate electronic funds transfers and may be used without unique identifying information such as a personal identification number to initiate access to the debit cardholder's account.

(e) "Debit card issuer" means any person who issues a debit card or the agent of that person for that purpose.

(f) "Debit cardholder" means a natural person to whom a debit card is issued.

(g) "Unauthorized use" means the use of a debit card by a person, other than the debit cardholder, to initiate an electronic fund transfer from the debit cardholder's account without actual authority to initiate the transfer and from which the debit cardholder receives no benefit. The term does not include an electronic fund transfer initiated in any of the following manners:

(1) By a person who was furnished the debit card to the debit cardholder's account by the debit cardholder, unless the debit cardholder has notified the debit card issuer that transfers by that person are no longer authorized.

(2) With fraudulent intent by the debit cardholder or any person acting in concert with the debit cardholder.

(3) By the debit card issuer or its employee.

1748.31. (a) A debit cardholder shall be liable for an unauthorized use of a debit card only if all of the following conditions are met:

(1) The card is an accepted debit card.

(2) Except as provided in subdivision (b), the liability is not in excess of fifty dollars ($50).

(3) The debit card issuer has given adequate notice to the debit cardholder of the potential liability.

(4) The debit card issuer has provided the debit cardholder with a description of the means by which the debit card issuer may be notified of loss or theft of the card.

(5) The unauthorized use occurs before the debit card issuer has been notified by the debit cardholder that an unauthorized use of the debit card has occurred or may occur as a result of loss, theft, or otherwise.

(6) The debit card issuer has provided a means to identify the debit cardholder to whom the debit card was issued.

(b) Notwithstanding subdivision (a), if the debit cardholder fails to report an unauthorized use that appears on a periodic statement within 60 days of the debit card issuer's transmittal of the statement, and if the issuer establishes that an unauthorized use would not have occurred had the debit cardholder notified the issuer within the 60-day period, the debit cardholder shall be liable for the amount of each unauthorized transfer that occurs after the close of the 60 days and before notice to the issuer. If the debit cardholder's delay in notifying the debit card issuer was due to extenuating circumstances

beyond the debit cardholder's reasonable control, the time specified above shall be extended by a reasonable period. For the purposes of this subdivision, examples of extenuating circumstances include, but are not limited to, extended travel, the death or serious illness of the debit cardholder or a member of the debit cardholder's family, hospitalization, permanent mental impairment, or serious physical impairment, unless the circumstance did not reasonably contribute to the cardholder's delay in notifying the debit card issuer within the 60-day period.

(c) A debit cardholder shall have no liability for erroneous or fraudulent transfers initiated by a debit card issuer, its agent, or employee.

CHAPTER 245

An act to add Article 4.5 (commencing with Section 12087) to Chapter 1 of Title 2 of Part 4 of the Penal Code, relating to firearms.

[Approved by Governor August 27, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Article 4.5 (commencing with Section 12087) is added to Chapter 1 of Title 2 of Part 4 of the Penal Code, to read:

Article 4.5. Firearms Safety Devices

12087. This article shall be known and may be cited as the "Aroner-Scott-Hayden Firearms Safety Act of 1999."

12087.5. The Legislature makes the following findings:

(a) In the years 1987 to 1996, nearly 2,200 children in the United States under the age of 15 years died in unintentional shootings. In 1996 alone, 138 children were shot and killed unintentionally. Thus, more than 11 children every month, or one child every three days, were shot or killed unintentionally in firearms-related incidents.

(b) The United States leads the industrialized world in the rates of children and youth lost to unintentional, firearms-related death. A 1997 study from the federal Centers for Disease Control and Prevention reveals that for unintentional firearm-related deaths for children under the age of 15, the rate in the United States was nine times higher than in 25 other industrialized countries combined.

(c) While the number of unintentional deaths from firearms is an unacceptable toll on America's children, nearly eight times that number are treated in U.S. hospital emergency rooms each year for nonfatal unintentional gunshot wounds.

(d) A study of unintentional firearm deaths among children in California found that unintentional gunshot wounds most often involve handguns.

(e) A study in the December 1995 issue of the Archives of Pediatric and Adolescent Medicine found that children as young as three years old are strong enough to fire most commercially available handguns. The study revealed that 25 percent of three to four year olds and 70 percent of five to six year olds had sufficient finger strength to fire 59 (92 percent) of the 64 commonly available handguns referenced in the study.

(f) The Government Accounting Office (GAO), in its March 1991 study, "Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could be Prevented," estimates that 31 percent of accidental deaths caused by firearms might be prevented by the addition of two safety devices: a child-resistant safety device that automatically engages and a device that indicates whether the gun is loaded. According to the study results, of the 107 unintentional firearms-related fatalities the GAO examined for the calendar years 1988 and 1989, eight percent could have been prevented had the firearm been equipped with a child-resistant safety device. This eight percent represents instances in which children under the age of six unintentionally shot and killed themselves or other persons.

(g) Currently, firearms are the only products manufactured in the United States that are not subject to minimum safety standards.

(h) A 1997 public opinion poll conducted by the National Opinion Research Center at the University of Chicago in conjunction with the Johns Hopkins Center for Gun Policy and Research found that 74 percent of Americans support safety regulation of the firearms industry.

(i) Some currently available trigger locks and other similar devices are inadequate to prevent the accidental discharge of the firearms to which they are attached, or to prevent children from gaining access to the firearm.

12088. Effective January 1, 2001:

(a) The Department of Justice shall certify laboratories to verify compliance with standards for firearms safety devices set forth in Section 12088.2.

(b) The Department of Justice may charge any laboratory that is seeking certification to test firearms safety devices a fee not exceeding the costs of certification, including costs associated with the development and approval of regulations and standards pursuant to Section 12088.2.

(c) The certified laboratory shall, at the manufacturer's or dealer's expense, test the firearms safety device and submit a copy of the final test report directly to the Department of Justice along with the firearms safety device. The department shall notify the manufacturer or dealer of its receipt of the final test report and the department's

determination as to whether the firearms safety device tested may be sold in this state.

(d) On and after July 1, 2001, the Department of Justice shall compile, publish, and thereafter maintain a roster listing all of the safety devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for firearms safety devices and may be sold in this state.

(e) The roster shall list, for each firearms safety device, the manufacturer, model number, and model name.

12088.1. Effective January 1, 2002:

(a) All firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state, shall include or be accompanied by a firearms safety device that is listed on the Department of Justice's roster of approved firearms safety devices.

(b) All firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state shall be accompanied with warning language or labels as described in Section 12088.3.

(c) The sale or transfer of a firearm shall be exempt from subdivision (a) if both of the following apply:

(1) The purchaser or transferee owns a gun safe that meets the standards set forth in Section 12088.2. Gun safes shall not be required to be tested, and therefore may meet the standards without appearing on the Department of Justice roster.

(2) The purchaser or transferee presents an original receipt for purchase of the gun safe, or other proof of purchase or ownership of the gun safe as authorized by the Attorney General, to the firearms dealer. The dealer shall maintain a copy of this receipt or proof of purchase with the dealers' record of sales of firearms.

(d) The sale or transfer of a firearm shall be exempt from subdivision (a) if all of the following apply:

(1) The purchaser or transferee purchases an approved safety device no more than 30 days prior to the day the purchaser or transferee takes possession of the firearm.

(2) The purchaser or transferee presents the approved safety device to the firearms dealer when picking up the firearm.

(3) The purchaser or transferee presents an original receipt to the firearms dealer which shows the date of purchase, the name, and the model number of the safety device.

(4) The firearms dealer verifies that the requirements in (1) to (3), inclusive, have been satisfied.

(5) The firearms dealer maintains a copy of the receipt along with the dealers' record of sales of firearms.

12088.2. (a) No later than January 1, 2000, the Attorney General shall commence development of regulations to implement a minimum safety standard for firearms safety devices and gun safes to significantly reduce the risk of firearms-related injuries to children

17 years of age and younger. The final standard shall do all of the following:

(1) Address the risk of injury from unintentional gunshot wounds.

(2) Address the risk of injury from self-inflicted gunshot wounds by unauthorized users.

(3) Include provisions to ensure that all firearms safety devices and gun safes are reusable and of adequate quality and construction to prevent children and unauthorized users from firing the firearm and to ensure that these devices cannot be readily removed from the firearm or that the firearm cannot be readily removed from the gun safe except by an authorized user utilizing the key, combination, or other method of access intended by the manufacturer of the device.

(4) Include additional provisions as appropriate.

(b) The Attorney General may consult, for the purposes of guidance in development of the standards, test protocols such as those described in Title 16 (commencing with Part 1700) of the Code of Federal Regulations, relating to poison prevention packaging standards. These protocols may be consulted to provide suggestions for potential methods to utilize in developing standards and shall serve as guidance only. The Attorney General shall also give appropriate consideration to the use of devices that are not detachable, but are permanently installed and incorporated into the design of a firearm. The Attorney General shall adopt and issue regulations implementing a final standard not later than January 1, 2001. The Attorney General shall report to the Legislature on these standards by January 1, 2001. The final standard shall be effective January 1, 2002.

12088.3. (a) The packaging of any firearm and any descriptive materials that accompany any firearm sold or transferred in this state, or delivered for sale in this state, by any licensed manufacturer, or licensed dealer, shall bear a label containing the following warning statement:

WARNING

Children are attracted to and can operate firearms that can cause severe injuries or death.

Prevent child access by always keeping guns locked away and unloaded when not in use. If you keep a loaded firearm where a child obtains and improperly uses it, you may be fined or sent to prison.

A yellow triangle containing an exclamation mark shall appear immediately before the word "Warning" on the label.

(b) If the firearm is sold or transferred without accompanying packaging, the warning label or notice shall be affixed to the firearm

itself by a method to be prescribed by regulation of the Attorney General.

(c) The warning statement required under subdivisions (a) and (b) shall be:

(1) Displayed in its entirety on the principal display panel of the firearm's package, and on any descriptive materials that accompany the firearm.

(2) Displayed in both English and Spanish in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on that package or descriptive materials in a manner consistent with Part 1500.121 of Title 16, of the Code of Federal Regulations, or successor regulations thereto.

12088.4. (a) If at any time the Attorney General determines that a gun safe or firearms safety device subject to the provisions of this article and sold after January 1, 2002, does not conform with the standards required by subdivision (a) of Section 12088.1 or Section 12088.2, the Attorney General may order the recall and replacement of the gun safe or firearms safety device, or order that the gun safe or firearm safety device be brought into conformity with those requirements. If the firearms safety device cannot be separated from the firearm without damaging the firearm, the Attorney General may order the recall and replacement of the firearm. If the firearms safety device can be separated and reattached to the firearm without damaging the firearm, the licensed manufacturer or licensed firearms dealer shall immediately provide a conforming replacement as instructed by the Attorney General.

12088.5. Each lead law enforcement agency investigating an incident shall report to the State Department of Health Services any information obtained which reasonably supports the conclusion that:

(a) A child 18 years of age or younger suffered an unintentional or self-inflicted gunshot wound inflicted by a firearm that was sold or transferred in this state, or manufactured in this state.

(b) Whether as a result of that incident the child died, suffered serious injury, or was treated for an injury by a medical professional.

12088.6. Any violation of Section 12088.1 or Section 12088.3 is punishable by a fine of one thousand dollars ($1,000). On the second violation of any of those sections, the licensed firearm manufacturer shall be ineligible to manufacture, or the licensed firearm dealer shall be ineligible to sell, firearms in this state for 30 days, and shall be punished by a fine of one thousand dollars ($1,000). On the third violation of any of those sections, a firearm manufacturer shall be permanently ineligible to manufacture firearms in this state. On the third violation of any of those sections, a licensed firearm dealer shall be permanently ineligible to sell firearms in this state.

12088.7. Compliance with the requirements set forth in this article shall not relieve any person from liability to any other person as may be imposed pursuant to common law, statutory law, or local ordinance.

12088.8. (a) This article does not apply to the commerce of any firearm defined as an "antique firearm" in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.

(b) This article shall not apply to the commerce of any firearm intended to be used by a salaried, full-time peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 for purposes of law enforcement. Nothing in this article shall preclude local governments, local agencies, or state law enforcement agencies from requiring their peace officers to store their firearms in gun safes or attach firearms safety devices to those firearms.

12088.9. (a) The Department of Justice may require each dealer to charge each firearm purchaser or transferee a fee not to exceed one dollar ($1) for each firearm transaction. The fee shall be for the purpose of supporting department program costs related to this act, including the establishment, maintenance, and upgrading of related data base systems and public rosters.

(b) There is hereby created within the General Fund the Firearm Safety Account. Revenue from the fee imposed by subdivision (a) shall be deposited into the Firearm Safety Account and shall be available for expenditure by the Department of Justice upon appropriation by the Legislature. Expenditures from the the Firearm Safety Account shall be limited to program expenditures as defined by subdivision (a).

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.

CHAPTER 246

An act to add Article 4.5 (commencing with Section 12087) to Chapter 1 of Title 2 of Part 4 of the Penal Code, relating to firearm safety devices.

[Approved by Governor August 27, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Article 4.5 (commencing with Section 12087) is added to Chapter 1 of Title 2 of Part 4 of the Penal Code, to read:

Article 4.5. Firearms Safety Devices

12087. This article shall be known and may be cited as the "Aroner-Scott-Hayden Firearms Safety Act of 1999."

12087.5. The Legislature makes the following findings:

(a) In the years 1987 to 1996, nearly 2,200 children in the United States under the age of 15 years died in unintentional shootings. In 1996 alone, 138 children were shot and killed unintentionally. Thus, more than 11 children every month, or one child every three days, were shot or killed unintentionally in firearms-related incidents.

(b) The United States leads the industrialized world in the rates of children and youth lost to unintentional, firearms-related deaths. A 1997 study from the federal Centers for Disease Control and Prevention reveals that for unintentional firearm-related deaths for children under the age of 15, the rate in the United States was nine times higher than in 25 other industrialized countries combined.

(c) While the number of unintentional deaths from firearms is an unacceptable toll on America's children, nearly eight times that number are treated in U.S. hospital emergency rooms each year for nonfatal unintentional gunshot wounds.

(d) A study of unintentional firearm deaths among children in California found that unintentional gunshot wounds most often involve handguns.

(e) A study in the December 1995 issue of the Archives of Pediatric and Adolescent Medicine found that children as young as three years old are strong enough to fire most commercially available handguns. The study revealed that 25 percent of three to four year olds and 70 percent of five to six year olds had sufficient finger strength to fire 59 (92 percent) of the 64 commonly available handguns referenced in the study.

(f) The Government Accounting Office (GAO), in its March 1991 study, "Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could be Prevented," estimates that 31 percent of accidental deaths caused by firearms might be prevented by the addition of two safety devices: a child-resistant safety device that automatically engages and a device that indicates whether the gun is loaded. According to the study results, of the 107 unintentional firearms-related fatalities the GAO examined for the calendar years 1988 and 1989, eight percent could have been prevented had the firearm been equipped with a child-resistant safety device. This eight percent represents instances in which children under the age of six unintentionally shot and killed themselves or other persons.

(g) Currently, firearms are the only products manufactured in the United Stated that are not subject to minimum safety standards.

(h) A 1997 public opinion poll conducted by the National Opinion Research Center at the University of Chicago in conjunction with the Johns Hopkins Center for Gun Policy and Research found that 74

percent of Americans support safety regulation of the firearms industry.

(i) Some currently available trigger locks and other similar devices are inadequate to prevent the accidental discharge of the firearms to which they are attached, or to prevent children from gaining access to the firearm.

12088. Effective January 1, 2001:

(a) The Department of Justice shall certify laboratories to verify compliance with standards for firearms safety devices set forth in Section 12088.2.

(b) The Department of Justice may charge any laboratory that is seeking certification to test firearms safety devices a fee not exceeding the costs of certification, including costs associated with the development and approval of regulations and standards pursuant to Section 12088.2.

(c) The certified laboratory shall, at the manufacturer's or dealer's expense, test the firearms safety device and submit a copy of the final test report directly to the Department of Justice along with the firearms safety device. The department shall notify the manufacturer or dealer of its receipt of the final test report and the department's determination as to whether the firearms safety device tested may be sold in this state.

(d) On and after July 1, 2001, the Department of Justice shall compile, publish, and thereafter maintain a roster listing all of the safety devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for firearms safety devices and may be sold in this state.

(e) The roster shall list, for each firearms safety device, the manufacturer, model number, and model name.

12088.1. Effective January 1, 2002:

(a) All firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state, shall include or be accompanied by a firearms safety device that is listed on the Department of Justice's roster of approved firearms safety devices.

(b) All firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state shall be accompanied with warning language or labels as described in Section 12088.3.

(c) The sale or transfer of a firearm shall be exempt from subdivision (a) if both of the following apply:

(1) The purchaser or transferee owns a gun safe that meets the standards set forth in Section 12088.2. Gun safes shall not be required to be tested, and therefore may meet the standards without appearing on the Department of Justice roster.

(2) The purchaser or transferee presents an original receipt for purchase of the gun safe, or other proof of purchase or ownership of the gun safe as authorized by the Attorney General, to the firearms

dealer. The dealer shall maintain a copy of this receipt or proof of purchase with the dealers' record of sales of firearms.

(d) The sale or transfer of a firearm shall be exempt from subdivision (a) if all of the following apply:

(1) The purchaser or transferee purchases an approved safety device no more than 30 days prior to the day the purchaser or transferee takes possession of the firearm.

(2) The purchaser or transferee presents the approved safety device to the firearms dealer when picking up the firearm.

(3) The purchaser or transferee presents an original receipt to the firearms dealer which shows the date of purchase, the name, and the model number of the safety device.

(4) The firearms dealer verifies that the requirements in (1) to (3), inclusive, have been satisfied.

(5) The firearms dealer maintains a copy of the receipt along with the dealers' record of sales of firearms.

12088.2. (a) No later than January 1, 2000, the Attorney General shall commence development of regulations to implement a minimum safety standard for firearms safety devices and gun safes to significantly reduce the risk of firearms-related injuries to children 17 years of age and younger. The final standard shall do all of the following:

(1) Address the risk of injury from unintentional gunshot wounds.

(2) Address the risk of injury from self-inflicted gunshot wounds by unauthorized users.

(3) Include provisions to ensure that all firearms safety devices and gun safes are reusable and of adequate quality and construction to prevent children and unauthorized users from firing the firearm and to ensure that these devices cannot be readily removed from the firearm or that the firearm cannot be readily removed from the gun safe except by an authorized user utilizing the key, combination, or other method of access intended by the manufacturer of the device.

(4) Include additional provisions as appropriate.

(b) The Attorney General may consult, for the purposes of guidance in development of the standards, test protocols such as those described in Title 16 (commencing with Part 1700) of the Code of Federal Regulations, relating to poison prevention packaging standards. These protocols may be consulted to provide suggestions for potential methods to utilize in developing standards and shall serve as guidance only. The Attorney General shall also give appropriate consideration to the use of devices that are not detachable, but are permanently installed and incorporated into the design of a firearm. The Attorney General shall adopt and issue regulations implementing a final standard not later than January 1, 2001. The Attorney General shall report to the Legislature on these standards by January 1, 2001. The final standard shall be effective January 1, 2002.

12088.3. (a) The packaging of any firearm and any descriptive materials that accompany any firearm sold or transferred in this state, or delivered for sale in this state, by any licensed manufacturer, or licensed dealer, shall bear a label containing the following warning statement:

WARNING

Children are attracted to and can operate firearms that can cause severe injuries or death.

Prevent child access by always keeping guns locked away and unloaded when not in use. If you keep a loaded firearm where a child obtains and improperly uses it, you may be fined or sent to prison.

A yellow triangle containing an exclamation mark shall appear immediately before the word "Warning" on the label.

(b) If the firearm is sold or transferred without accompanying packaging, the warning label or notice shall be affixed to the firearm itself by a method to be prescribed by regulation of the Attorney General.

(c) The warning statement required under subdivisions (a) and (b) shall be:

(1) Displayed in its entirety on the principal display panel of the firearm's package, and on any descriptive materials that accompany the firearm.

(2) Displayed in both English and Spanish in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on that package or descriptive materials in a manner consistent with Part 1500.121 of Title 16, of the Code of Federal Regulations, or successor regulations thereto.

12088.4. If at any time the Attorney General determines that a gun safe or firearms safety device subject to the provisions of this article and sold after January 1, 2002, does not conform with the standards required by subdivision (a) of Section 12088.1 or Section 12088.2, the Attorney General may order the recall and replacement of the gun safe or firearms safety device, or order that the gun safe or firearm safety device be brought into conformity with those requirements. If the firearms safety device cannot be separated from the firearm without damaging the firearm, the Attorney General may order the recall and replacement of the firearm. If the firearms safety device can be separated and reattached to the firearm without damaging the firearm, the licensed manufacturer or licensed firearms dealer shall immediately provide a conforming replacement as instructed by the Attorney General.

12088.5. Each lead law enforcement agency investigating an incident shall report to the State Department of Health Services any information obtained that reasonably supports the conclusion that:

(a) A child 18 years of age or younger suffered an unintentional or self-inflicted gunshot wound inflicted by a firearm that was sold or transferred in this state, or manufactured in this state.

(b) Whether as a result of that incident the child died, suffered serious injury, or was treated for an injury by a medical professional.

12088.6. Any violation of Section 12088.1 or Section 12088.3 is punishable by a fine of one thousand dollars ($1,000). On the second violation of any of those sections, the licensed firearm manufacturer shall be ineligible to manufacture, or the licensed firearm dealer shall be ineligible to sell, firearms in this state for 30 days, and shall be punished by a fine of one thousand dollars ($1,000). On the third violation of any of those sections, a firearm manufacturer shall be permanently ineligible to manufacture firearms in this state. On the third violation of any of those sections, a licensed firearm dealer shall be permanently ineligible to sell firearms in this state.

12088.7. Compliance with the requirements set forth in this article shall not relieve any person from liability to any other person as may be imposed pursuant to common law, statutory law, or local ordinance.

12088.8. (a) This article does not apply to the commerce of any firearm defined as an "antique firearm" in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.

(b) This article shall not apply to the commerce of any firearm intended to be used by a salaried, full-time peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 for purposes of law enforcement. Nothing in this article shall preclude local governments, local agencies, or state law enforcement agencies from requiring their peace officers to store their firearms in gun safes or attach firearms safety devices to those firearms.

12088.9. (a) The Department of Justice may require each dealer to charge each firearm purchaser or transferee a fee not to exceed one dollar ($1) for each firearm transaction. The fee shall be for the purpose of supporting department program costs related to this act, including the establishment, maintenance, and upgrading of related data base systems and public rosters.

(b) There is hereby created within the General Fund the Firearm Safety Account. Revenue from the fee imposed by subdivision (a) shall be deposited into the Firearm Safety Account and shall be available for expenditure by the Department of Justice upon appropriation by the Legislature. Expenditures from the Firearm Safety Account shall be limited to program expenditures as defined by subdivision (a).

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.

CHAPTER 247

An act to amend Sections 171b and 12071.1 of, and to add Section 12071.4 to, the Penal Code, relating to firearms.

[Approved by Governor August 27, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 171b of the Penal Code is amended to read:

171b. (a) Any person who brings or possesses within any state or local public building or at any meeting required to be open to the public pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, any of the following is guilty of a public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison:

(1) Any firearm.

(2) Any deadly weapon described in Section 653k or 12020.

(3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(4) Any unauthorized tear gas weapon.

(5) Any taser or stun gun, as defined in Section 244.5.

(6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun or paint gun.

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

(1) A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence.

(2) (A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person who brings or possesses any weapon specified therein within any courtroom if he or she is a party to an action pending before the court.

(3) A person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(4) A person who has permission to possess that weapon granted in writing by a duly authorized official who is in charge of the security of the state or local government building.

(5) A person who lawfully resides in, lawfully owns, or is in lawful possession of, that building with respect to those portions of the building that are not owned or leased by the state or local government.

(6) A person licensed or registered in accordance with, and acting within the course and scope of, Chapter 11.5 (commencing with Section 7512) or Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code who has been hired by the owner or manager of the building if the person has permission pursuant to paragraph (5).

(7) (A) A person who, for the purpose of sale or trade, brings any weapon that may otherwise be lawfully transferred, into a gun show conducted pursuant to Sections 12071.1 and 12071.4.

(B) A person who, for purposes of an authorized public exhibition, brings any weapon that may otherwise be lawfully possessed, into a gun show conducted pursuant to Sections 12071.1 and 12071.4.

(c) As used in this section, "state or local public building" means a building that meets all of the following criteria:

(1) It is a building or part of a building owned or leased by the state or local government, if state or local public employees are regularly present for the purposes of performing their official duties. A state or local public building includes, but is not limited to, a building that contains a courtroom.

(2) It is not a building or facility, or a part thereof, that is referred to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code, or in Section 18544 of the Elections Code.

(3) It is a building not regularly used, and not intended to be used, by state or local employees as a place of residence.

SEC. 2. Section 12071.1 of the Penal Code is amended to read:

12071.1. (a) No person shall produce, promote, sponsor, operate, or otherwise organize a gun show or event, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, unless that person possesses a valid certificate of eligibility from the Department of Justice. Unless the department's records indicate that the applicant is a person prohibited from possessing firearms, a certificate of eligibility shall be issued by the Department of Justice to an applicant provided the applicant does all of the following:

(1) Certifies that he or she is familiar with the provisions of this section and Section 12071.4.

(2) Ensures that liability insurance is in effect for the duration of an event or show in an amount of not less than one million dollars ($1,000,000).

(3) Provides an annual list of the gun shows or events that the applicant plans to promote, produce, sponsor, operate, or otherwise organize during the year for which the certificate of eligibility is issued, including the date, time, and location of the gun shows or events.

(b) If during that year the information required by paragraph (3) of subdivision (a) changes, or additional gun shows or events will be promoted, produced, sponsored, operated, or otherwise organized by the applicant, the producer shall notify the Department of Justice no later than 30 days prior to the gun show or event.

(c) As used in this section, a "licensed gun show producer" means a person who has been issued a certificate of eligibility by the Department of Justice pursuant to subdivision (a). No regulations shall be required to implement this subdivision.

(d) The Department of Justice shall adopt regulations to administer the certificate of eligibility program under this section and shall recover the full costs of administering the program by fees assessed applicants who apply for certificates. A licensed gun show producer shall be assessed an annual fee of eighty-five dollars ($85) by the department.

(e) (1) A willful failure by a gun show producer to comply with any of the requirements of this section, except for the posting of required signs, shall be a misdemeanor punishable by a fine not to exceed two thousand dollars ($2,000), and shall render the producer ineligible for a gun show producer license for one year from the date of the conviction.

(2) The willful failure of a gun show producer to post signs as required by this section shall be a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000) for the first offense and not to exceed two thousand dollars ($2,000) for the second or subsequent offense, and with respect to the second or subsequent offense, shall render the producer ineligible for a gun show producer license for one year from the date of the conviction.

(3) Multiple violations charged pursuant to paragraph (1) arising from more than one gun show or event shall be grounds for suspension of a producer's certificate of eligibility pending adjudication of the violations.

(f) Prior to the commencement of a gun show or event, the producer thereof shall, upon written request, within 48 hours, or a later time specified by the requesting law enforcement agency, make available to the requesting law enforcement agency with jurisdiction over the facility, a complete and accurate list of all persons, entities, and organizations that have leased or rented, or are known to the

producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms.

The producer shall thereafter, upon written request, for every day the gun show or event operates, within 24 hours, or a later time specified by the requesting law enforcement agency, make available to the requesting law enforcement agency with jurisdiction over the facility, an accurate, complete, and current list of the persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms.

This subdivision applies to persons, entities, and organizations whether or not they participate in the entire gun show or event, or only a portion thereof.

(g) The information that may be requested by the law enforcement agency with jurisdiction over the facility, and that shall be provided by the producer upon request, may include, but is not limited to, the following information relative to a vendor who offers for sale firearms manufactured after December 31, 1898: his or her complete name, and a driver's license or identification card number.

(h) The producer and facility manager shall prepare an annual event and security plan and schedule that shall include, at a minimum, the following:

(1) The type of shows or events including, but not limited to, antique or general firearms.

(2) The estimated number of vendors offering firearms for sale or display.

(3) The estimated number of attendees.

(4) The number of entrances and exits at the gun show or event site.

(5) The location, dates, and times of the shows or events.

(6) The contact person and telephone number for both the producer and the facility.

(7) The number of sworn peace officers employed by the producer or the facilities manager who will be present at the show or event.

(8) The number of nonsworn security personnel employed by the producer or the facility's manager who will be present at the show or event.

(i) The annual event and security plan shall be submitted by either the producer or the facility's manager to the Department of Justice and the law enforcement agency with jurisdiction over the facility. Not later than 15 days prior to the commencement of the gun show or event, the producer shall submit to the department, the law enforcement agency with jurisdiction over the facility site, and the facility's manager a revised event and security plan if significant changes have been made since the annual plan was submitted,

including a revised list of vendors that the producer knows, or reasonably should know, will be renting tables, space, or otherwise participating in the gun show or event. The event and security plan shall be approved by the facility's manager prior to the event or show after consultation with the law enforcement agency with jurisdiction over the facility. No gun show or event shall commence unless the requirements of this subdivision are met.

(j) The producer shall be responsible for informing prospective gun show vendors of the requirements of this section and of Section 12071.4 that apply to vendors.

(k) The producer shall, within seven calendar days of the commencement of the show or event, but not later than noon on Friday for a show or event held on a weekend, submit a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice for the purpose of determining whether these prospective vendors and designated firearms transfer agents possess valid licenses and are thus eligible to participate as licensed dealers at the show or event. The department shall examine its records and if it determines that a dealer's license is not valid, it shall notify the show or event producer of that fact prior to the commencement of the show or event.

(*l*) If a licensed firearms dealer fails to cooperate with a producer or fails to comply with the applicable requirements of this section or Section 12071.4, that person shall not be allowed to participate in that show or event.

(m) If a producer fails to comply with subdivision (j) or (k), the gun show or event shall not commence until those requirements are met.

(n) All producers shall have written contracts with all gun show vendors selling firearms at the show or event.

(o) The producer shall require that signs be posted in a readily visible location at each public entrance to the show containing, but not limited to, the following notices:

(1) This gun show follows all federal, state, and local firearms and weapons laws without exception.

(2) All firearms carried onto the premises by members of the public will be checked, cleared of any ammunition, secured in a manner that prevents them from being operated, and an identification tag or sticker will be attached to the firearm prior to the person being allowed admittance to the show.

(3) No member of the public under the age of 18 years shall be admitted to the show unless accompanied by a parent, grandparent, or legal guardian.

(4) All firearms transfers between private parties at the show shall be conducted through a licensed dealer in accordance with applicable state and federal laws.

(5) Persons possessing firearms on this facility must have in their immediate possession government-issued photo identification, and

display it upon request to any security officer or any peace officer, as defined in Section 830.

(p) The show producer shall post, in a readily visible location at each entrance to the parking lot at the show, signage that states: "The transfer of firearms on the parking lot of this facility is a crime."

(q) It is the intent of the Legislature that the certificate of eligibility program established pursuant to this section be incorporated into the certificate of eligibility program established pursuant to Section 12071 to the maximum extent practicable.

SEC. 3. Section 12071.4 is added to the Penal Code, to read:

12071.4. (a) This section shall be known, and may be cited as, the Gun Show Enforcement and Security Act of 2000.

(b) All gun show or event vendors shall certify in writing to the producer that they:

(1) Will not display, possess, or offer for sale any firearms, knives, or weapons for which possession or sale is prohibited.

(2) Acknowledge that they are responsible for knowing and complying with all applicable federal, state, and local laws dealing with the possession and transfer of firearms.

(3) Will not engage in activities that incite or encourage hate crimes.

(4) Will process all transfers of firearms through licensed firearms dealers as required by state law.

(5) Will verify that all firearms in their possession at the show or event will be unloaded, and that the firearms will be secured in a manner that prevents them from being operated except for brief periods when the mechanical condition of a firearm is being demonstrated to a prospective buyer.

(6) Have complied with the requirements of subdivision (e).

(7) Will not display or possess black powder, or offer it for sale.

(c) All firearms transfers at the gun show or event shall be in accordance with applicable state and federal laws.

(d) Except for purposes of showing ammunition to a prospective buyer, ammunition at a gun show or event may be displayed only in closed original factory boxes or other closed containers.

(e) Prior to the commencement of a gun show or event, each vendor shall provide to the producer all of the following information relative to the vendor, the vendor's employees, and other persons, compensated or not, who will be working or otherwise providing services to the public at the vendor's display space if firearms manufactured after December 31, 1898, will be offered for sale:

(1) His or her complete name.

(2) His or her driver's license or state-issued identification card number.

(3) His or her date of birth.

The producer shall keep the information at the show's or event's onsite headquarters for the duration of the show or event, and at the producer's regular place of business for two weeks after the

conclusion of the show or event, and shall make the information available upon request to any sworn peace officer for purposes of the officer's official law enforcement duties.

(f) Vendors and employees of vendors shall wear name tags indicating first and last name.

(g) No person at a gun show or event, other than security personnel or sworn peace officers, shall possess at the same time both a firearm and ammunition that is designed to be fired in the firearm. Vendors having those items at the show for sale or exhibition are exempt from this prohibition.

(h) No member of the public who is under the age of 18 years shall be admitted to, or be permitted to remain at, a gun show or event unless accompanied by a parent or legal guardian. Any member of the public who is under the age of 18 shall be accompanied by his or her parent, grandparent, or legal guardian while at the show or event.

(i) Persons other than show or event security personnel, sworn peace officers, or vendors, who bring firearms onto the gun show or event premises shall sign in ink the tag or sticker that is attached to the firearm prior to being allowed admittance to the show or event, as provided for in subdivision (j).

(j) All firearms carried onto the premises of a gun show or event by members of the public shall be checked, cleared of any ammunition, secured in a manner that prevents them from being operated, and an identification tag or sticker shall be attached to the firearm, prior to the person being allowed admittance to the show. The identification tag or sticker shall state that all firearms transfers between private parties at the show or event shall be conducted through a licensed dealer in accordance with applicable state and federal laws. The person possessing the firearm shall complete the following information on the tag before it is attached to the firearm:

(1) The gun owner's signature.

(2) The gun owner's printed name.

(3) The identification number from the gun owner's government-issued photo identification.

(k) All persons possessing firearms at the gun show or event shall have in his or her immediate possession, government-issued photo identification, and display it upon request, to any security officer, or any peace officer.

(*l*) Unless otherwise specified, a first violation of this section is an infraction. Any second or subsequent violation is a misdemeanor. Any person who commits an act which he or she knows to be a violation of this section is guilty of a misdemeanor for a first 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.

CHAPTER 248

An act to add Chapter 1.3 (commencing with Section 12125) to Title 2 of Part 4 of the Penal Code, relating to firearms.

[Approved by Governor August 27, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Chapter 1.3 (commencing with Section 12125) is added to Title 2 of Part 4 of the Penal Code, to read:

CHAPTER 1.3. UNSAFE HANDGUNS

12125. (a) Commencing January 1, 2001, any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

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

(1) The manufacture in this state, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 12130 to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited by this chapter, and, if not, for the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this state pursuant to Section 12131.

(2) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(4) The sale to, purchase by, or possession of any pistol, revolver or other firearm capable of being concealed upon the person by the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, and the

military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the possession of any pistol, revolver, or other firearm capable of being concealed upon the person by sworn members of these agencies, whether the sworn member is on or off duty, or an individual who is retired from service with a law enforcement agency and who is not otherwise prohibited from possessing a concealable firearm upon his or her retirement.

(c) Violations of subdivision (a) are cumulative with respect to each handgun 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 other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

12126. As used in this chapter, "unsafe handgun" means any pistol, revolver, or other firearm capable of being concealed upon the person, as defined in subdivision (a) of Section 12001, for which any of the following is true:

(a) For a revolver:

(1) It does not have a safety device that, either automatically in the case of a double-action firing mechanism, or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge.

(2) It does not meet the firing requirement for handguns pursuant to Section 12127.

(3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

(b) For a pistol:

(1) It does not have a positive manually operated safety device, as determined by standards relating to imported guns promulgated by the federal Bureau of Alcohol, Tobacco, and Firearms.

(2) It does not meet the firing requirement for handguns pursuant to Section 12127.

(3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

12127. (a) As used in this chapter, the "firing requirement for handguns" means a test in which the manufacturer provides three handguns of the make and model for which certification is sought, these handguns not being in any way modified from those that would be sold if certification is granted, to an independent testing laboratory certified by the Attorney General pursuant to Section 12130. The laboratory shall fire 600 rounds from each gun, stopping after each series of 50 rounds has been fired for 5 to 10 minutes to allow the weapon to cool, stopping after each series of 100 rounds has been fired to tighten any loose screws and clean the gun in accordance with the manufacturer's instructions, and stopping as needed to refill the empty magazine or cylinder to capacity before

continuing. The ammunition used shall be of the type recommended by the handgun manufacturer in the user manual, or if none is recommended, any standard ammunition of the correct caliber in new condition. A handgun shall pass this test if each of the three test guns meets both of the following:

(1) Fires the first 20 rounds without a malfunction that is not due to faulty magazine or ammunition.

(2) Fires the full 600 rounds with no more than six malfunctions that are not due to faulty magazine or ammunition and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user.

(b) If a pistol or revolver fails the requirements of either paragraph (1) or (2) of subdivision (a) due to either a faulty magazine or faulty ammunition, the pistol or revolver shall be retested from the beginning of the "firing requirement for handguns" test. A new model of the pistol or revolver that failed due to a faulty magazine or ammunition may be submitted for the test to replace the pistol or revolver that failed.

(c) As used in this section, "malfunction" means a failure to properly feed, fire, or eject a round, or failure of a pistol to accept or reject a manufacturer-approved magazine, or failure of a pistol's slide to remain open after a manufacturer-approved magazine has been expended.

12128. As used in this chapter, the "drop safety requirement for handguns" means that at the conclusion of the firing requirements for handguns described in Section 12127, the same certified independent testing laboratory shall subject the same three handguns of the make and model for which certification is sought, to the following test:

A primed case (no powder or projectile) shall be inserted into the chamber. For pistols, the slide shall be released, allowing it to move forward under the impetus of the recoil spring, and an empty magazine shall be inserted. For both pistols and revolvers, the weapon shall be placed in a drop fixture capable of dropping the pistol from a drop height of 1m + 1cm (39.4 + 0.4 in.) onto the largest side of a slab of solid concrete having minimum dimensions of 7.5 × 15 × 15 cm (3 × 6 × 6 in.). The drop distance shall be measured from the lowermost portion of the weapon to the top surface of the slab. The weapon shall be dropped from a fixture and not from the hand. The weapon shall be dropped in the condition that it would be in if it were dropped from a hand (cocked with no manual safety applied). If the design of a pistol is such that upon leaving the hand a "safety" is automatically applied by the pistol, this feature shall not be defeated. An approved drop fixture is a short piece of string with the weapon attached at one end and the other end held in an air vise until the drop is initiated.

The following six drops shall be performed:

(a) Normal firing position with barrel horizontal.

(b) Upside down with barrel horizontal.
(c) On grip with barrel vertical.
(d) On muzzle with barrel vertical.
(e) On either side with barrel horizontal.
(f) If there is an exposed hammer or striker, on the rearmost point of that device, otherwise on the rearmost point of the weapon.

The primer shall be examined for indentations after each drop. If indentations are present, a fresh primed case shall be used for the next drop.

The handgun shall pass this test if each of the three test guns does not fire the primer.

12129. Every person who is licensed as a manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code who manufactures firearms in this state, and every person who imports into the state for sale, keeps for sale, or offers or exposes for sale any firearm, shall certify under penalty of perjury and any other remedy provided by law that every model, kind, class, style, or type of pistol, revolver, or other firearm capable of being concealed upon the person that he or she manufactures or imports, keeps, or exposes for sale is not an unsafe handgun as prohibited by this chapter.

12130. (a) Any pistol, revolver, or other firearm capable of being concealed upon the person manufactured in this state, imported into the state for sale, kept for sale, or offered or exposed for sale, shall be tested within a reasonable period of time by an independent laboratory certified pursuant to subdivision (b) to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person meets or exceeds the standards defined in Section 12126.

(b) On or before October 1, 2000, the Department of Justice shall certify laboratories to verify compliance with the standards defined in Section 12126. The department may charge any laboratory that is seeking certification to test any pistol, revolver, or other firearm capable of being concealed upon the person pursuant to this chapter a fee not exceeding the costs of certification.

(c) The certified testing laboratory shall, at the manufacturer's or importer's expense, test the firearm and submit a copy of the final test report directly to the Department of Justice along with a prototype of the weapon to be retained by the department. The department shall notify the manufacturer or importer of its receipt of the final test report and the department's determination as to whether the firearm tested may be sold in this state.

12131. (a) On and after January 1, 2001, the Department of Justice shall compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns,

and may be sold in this state pursuant to this title. The roster shall list, for each firearm, the manufacturer, model number, and model name.

(b) (1) The department may charge every person in this state who is licensed as a manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in this state, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster pursuant to subdivision (a) and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs necessary to implement this chapter.

(2) Any pistol, revolver, or other firearm capable of being concealed upon the person that is manufactured by a manufacturer who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in this state, and who fails to pay any fee required pursuant to paragraph (1), may be excluded from the roster.

12131.5. (a) A firearm shall be deemed to satisfy the requirements of subdivision (a) of Section 12131 if another firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm only in one or more of the following features:

(1) Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.

(2) The material from which the grips are made.

(3) The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

(4) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

(b) Any manufacturer seeking to have a firearm listed under this section shall provide to the Department of Justice all of the following:

(1) The model designation of the listed firearm.

(2) The model designation of each firearm that the manufacturer seeks to have listed under this section.

(3) A statement, under oath, that each unlisted firearm for which listing is sought differs from the listed firearm only in one or more of the ways identified in subdivision (a) and is in all other respects identical to the listed firearm.

(c) The department may, in its discretion and at any time, require a manufacturer to provide to the department any model for which

listing is sought under this section, to determine whether the model complies with the requirements of this section.

12132. This chapter shall not apply to any of the following:

(a) The sale, loan, or transfer of any firearm pursuant to Section 12082 or 12084 in order to comply with subdivision (d) of Section 12072.

(b) The sale, loan, or transfer of any firearm that is exempt from the provisions of subdivision (d) of Section 12072 pursuant to any applicable exemption contained in Section 12078, if the sale, loan, or transfer complies with the requirements of that applicable exemption to subdivision (d) of Section 12072.

(c) The sale, loan, or transfer of any firearm as described in paragraph (3) of subdivision (b) of Section 12125.

(d) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Section 12071 for the purposes of the service or repair of that firearm.

(e) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Section 12071 to its owner where that firearm was initially delivered in the circumstance set forth in subdivision (d).

(f) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Section 12071 to its owner where that firearm was initially delivered to that licensee for the purpose of a consignment sale or as collateral for a pawnbroker loan.

(g) The sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic, as defined in Section 178.11 of the Code of Federal Regulations.

12133. The provisions of this chapter shall not apply to a single-action revolver that has at least a five-cartridge capacity with a barrel length of not less than three inches, and meets any of the following specifications:

(a) Was originally manufactured prior to 1900 and is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(b) Has an overall length measured parallel to the barrel of at least seven and one-half inches when the handle, frame or receiver, and barrel are assembled.

(c) Has an overall length measured parallel to the barrel of at least seven and one-half inches when the handle, frame or receiver, and barrel are assembled and that is currently approved for importation into the United States pursuant to the provisions of paragraph (3) of subsection (d) of Section 925 of Title 18 of the United States Code.

SEC. 2. It is the intent of the Legislature that the Department of Justice pursue an internal loan from special fund revenues available to the department to cover startup costs for the program established

pursuant to Section 1 of this act. Any loan shall be repaid with the proceeds of fees collected under that program within six months.

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.

CHAPTER 249

An act to amend Section 23305.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 23305.5 of the Revenue and Taxation Code is amended to read:

23305.5. (a) For the purposes of this article, "taxpayer" shall include any limited liability company, foreign or domestic, that is organized in this state or registered with the Secretary of State.

(b) For purposes of this article, in the case of a limited liability company:

(1) "Articles of incorporation" shall include a limited liability company's articles of organization.

(2) "Tax" shall include the tax and fee imposed by Sections 17941 and 17942, or former Sections 23091 and 23092, respectively.

SEC. 2. The changes made to Section 23305.5 of the Revenue and Taxation Code by this act shall apply to taxable years beginning on or after January 1, 1997.

CHAPTER 250

An act to amend Sections 15679.1, 16101, 16901, 16903, 16905, 16906, 16907, 16911, 16914, 16915, 16916, and 17600 of, and to add Article 7.4 (commencing with Section 15677.1) to Chapter 3 of Title 2 of, and to add Chapter 11.5 (commencing with Section 17540.1) to Title 2.5 of, the Corporations Code, relating to legal entities.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Article 7.4 (commencing with Section 15677.1) is added to Chapter 3 of Title 2 of the Corporations Code, to read:

Article 7.4. Conversion

15677.1. For purposes of this article, the following definitions shall apply:

(a) "Converted entity" means the other business entity or foreign limited partnership that results from a conversion of a domestic limited partnership under this chapter.

(b) "Converted limited partnership" means a domestic limited partnership that results from a conversion of an other business entity or a foreign limited partnership pursuant to Section 15677.8.

(c) "Converting limited partnership" means a domestic limited partnership that converts to an other business entity or a foreign limited partnership pursuant to this chapter.

(d) "Converting entity" means an other business entity or foreign limited partnership that converts to a domestic limited partnership pursuant to the terms of Section 15677.8.

15677.2. A limited partnership may be converted into an other business entity or a foreign limited partnership pursuant to this article if, pursuant to the proposed conversion, each of the partners of the converting limited partnership receives a percentage interest in the profits and capital of the converted entity equal to that partner's percentage interest in profits and capital of the converting limited partnership as of the effective time of the conversion. The conversion of a limited partnership to an other business entity or a foreign limited partnership may be effected only if both of the following conditions are satisfied:

(a) The law under which the converted entity will exist expressly permits the formation of that entity pursuant to a conversion.

(b) The limited partnership complies with all other requirements of any other law that applies to conversion to the converted entity.

15677.3. (a) A limited partnership that desires to convert to an other business entity or a foreign limited partnership shall approve a plan of conversion. The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting limited partnership and the name of the converted entity after conversion.

(3) The manner of converting the limited and general partnership interests of each of the partners into securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the partnership agreement or limited liability company articles of organization and operating agreement, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the parties.

(b) The plan of conversion shall be approved by all general partners of the converting limited partnership and by a majority in interest of each class of limited partners of the converting limited partnership, unless a greater or lesser approval is required by the partnership agreement of the converting limited partnership. However, if the limited partners of the limited partnership would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the limited partners of the converting limited partnership, unless the plan of conversion provides that all limited partners will have dissenters' rights as provided in Article 7.6 (commencing with Section 15679.1).

(c) Upon the effectiveness of the conversion, all partners of the converting limited partnership, except those that exercise dissenters' rights as provided in Article 7.6 (commencing with Section 15679.1), shall be deemed parties to any governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not the partner has executed the plan of conversion or the governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(d) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by all general partners of the converting limited partnership and, if the amendment changes any of the principal terms of the plan of conversion, the amendment is approved by the limited partners of the converting limited partnership in the same manner and to the same extent as required for the approval of the original plan of conversion.

(e) The general partners of a converting limited partnership may, by unanimous approval at any time before the conversion is effective, in their discretion, abandon a conversion, without further approval by the limited partners, subject to the contractual rights of third parties other than limited partners.

(f) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic partnership or foreign other business entity or at the office at which records are to be kept under Section 17057 if the

converted entity is a domestic limited liability company. Upon the request of a partner of a converting limited partnership, the authorized person on behalf of the converted entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a partner of the rights provided in this subdivision shall be unenforceable.

15677.4. (a) A conversion into an other business entity, or a foreign limited partnership shall become effective upon the earliest date that all of the following occur:

(1) The approval of the plan of conversion by the partners of the converting limited partnership as provided in Section 15677.3.

(2) The filing of all documents required by law to create the converted entity, which documents shall also contain a statement of conversion, if required under Section 15677.6.

(3) The occurrence of the effective date, if set forth in the plan of conversion occurs.

(b) A copy of the statement of partnership authority or articles of organization complying with Section 15677.6, if applicable, duly certified by the Secretary of State, is conclusive evidence of the conversion of the limited partnership.

15677.5. (a) The conversion of a limited partnership into a foreign limited partnership or foreign other business entity shall be required to comply with Section 15677.2.

(b) If the limited partnership is converting into a foreign limited partnership or foreign other business entity, those conversion proceedings shall be in accordance with the laws of the state or place of organization of the foreign limited partnership or foreign other business entity and the conversion shall become effective in accordance with that law.

(c) (1) To enforce an obligation of a limited partnership that has converted to a foreign limited partnership or foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against that converted foreign entity, if the agent designated for the service of process for that entity is a natural person and cannot be found with due diligence or if the agent is a corporation and no person, to whom delivery may be made, may be located with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of that entity may be located after diligent search, and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall provide notice to that entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the providing of notice thereof to that entity, and the forwarding of the process shall be competent and prima facie evidence of the matters stated therein.

15677.6. (a) Upon conversion of a limited partnership one of the following applies:

(1) If the limited partnership is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(2) If the limited partnership is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed, then a certificate of conversion shall be filed separately.

(3) If the limited partnership is converting to a foreign limited partnership or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State.

(b) Any certificate or statement of conversion shall be executed and acknowledged by all general partners, unless a lesser number is provided in the certificate of limited partnership, and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting limited partnership.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the partners, which equaled or exceeded the vote required under Section 15677.3, specifying each class entitled to vote and the percentage vote required of each class.

(3) The form of organization of the converted entity.

(4) The mailing address of the converted entity's agent for service of process and the chief executive office of the converted entity.

(c) The filing with the Secretary of State of a certificate of conversion or a statement of partnership authority or articles of organization containing a statement of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting limited partnership and no converting limited partnership that has made the filing is required to file a certificate of dissolution or a certificate of cancellation under Section 15623 as a result of that conversion.

15677.7. (a) Whenever a limited partnership or other business entity having any real property in this state converts into a limited

partnership or an other business entity pursuant to the laws of this state or of the state or place in which the limited partnership or other business entity was organized, and the laws of the state or place of organization, including this state, of the converting limited partnership or other converting entity provide substantially that the conversion vests in the converted limited partnership or other converted entity all the real property of the converting limited partnership or other converting entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the converting limited partnership or other converting entity is located of either (1) a certificate of conversion or statement of partnership authority, or a certificate of limited partnership or articles of organization complying with Section 15677.6, in the form prescribed and certified by the Secretary of State, or (2) a copy of a certificate of conversion or a statement of partnership authority, certificate of limited partnership, articles of organization or other certificate evidencing the creation of a foreign other business entity or foreign limited partnership by conversion, containing a statement of conversion, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the conversion is effected, shall evidence record ownership in the converted limited partnership or other converted entity of all interest of the converting limited partnership or other converting entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded certificate of conversion or a statement of partnership authority, certificate of limited partnership, articles of organization, or other certificate evidencing the creation of a foreign other business entity or foreign limited partnership by conversion, containing a statement of conversion, filed pursuant to subdivision (a) of Section 15677.6, stating the name of the converting limited partnership or other converting entity in whose name property was held before the conversion and the name of the converted entity or converted limited partnership, but not containing all of the other information required by Section 15677.6, operates with respect to the entities named to the extent provided in subdivision (a).

(c) Recording of a certificate of conversion, or a statement of partnership authority, certificate of limited partnership, articles of organization, or other certificate evidencing the creation of an other business entity or a limited partnership by conversion, containing a statement of conversion, in accordance with subdivision (a), shall create, in favor of bona fide purchasers or encumbrances for value, a conclusive presumption that the conversion was validly completed.

15677.8. (a) An other business entity or a foreign limited partnership may be converted to a domestic limited partnership pursuant to this article only if the converting entity is not prohibited by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign limited partnership that desires to convert into a domestic limited partnership shall approve a plan of conversion or an instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign limited partnership shall be approved by the number or percentage of the partners, members, or holders of interest of the converting entity as is required by the law under which that entity is organized, or a greater or lesser percentage, subject to applicable laws, as set forth in the converting entity's partnership agreement, articles of organization, operating agreement, or other governing document.

(d) The conversion by an other business entity or a foreign limited partnership into a domestic limited partnership shall be effective under this article at the time the conversion is effective under the law under which the converting entity is organized as long as a certificate of limited partnership has been filed with the Secretary of State. If the converting entity's governing law is silent as to the effectiveness of the conversion, the conversion shall be effective upon the completion of all acts required under this title to form a limited partnership.

15677.9. (a) An entity that converts into another entity pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) Upon a conversion taking effect, all of the following apply:

(1) All the rights and property, whether real, personal, or mixed, of the converting entity or converting limited partnership are vested in the converted entity or converted limited partnership.

(2) All debts, liabilities, and obligations of the converting entity or converting limited partnership continue as debts, liabilities, and obligations of the converted entity or converted limited partnership.

(3) All rights of creditors and liens upon the property of the converting entity or converting limited partnership shall be preserved unimpaired and remain enforceable against the converted entity or converted limited partnership to the same extent as against the converting entity or converting limited partnership as if the conversion had not occurred.

(4) Any action or proceeding pending by or against the converting entity or converting limited partnership may be continued against the converted entity or converted limited partnership as if the conversion had not occurred.

(c) A partner of a converting limited partnership is liable for:

(1) All obligations of the converting limited partnership for which the partner was personally liable before the conversion.

(2) All obligations of the converted entity incurred after the conversion takes effect, but those obligations may be satisfied only out of property of the entity if that partner is a limited partner, a shareholder in a corporation, or unless expressly provided otherwise

in the articles of organization or other governing documents, a member of a limited liability company, or a holder of equity securities in an other converted entity if the holders of equity securities in that entity are not personally liable for the obligations of that entity under the law under which the entity is organized or its governing documents.

(d) A partner of a converted limited partnership remains liable for any and all obligations of the converting entity for which the partner was personally liable before the conversion, but only to the extent that the partner was liable for the obligations of the converting entity prior to the conversion.

(e) If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner.

SEC. 2. Section 15679.1 of the Corporations Code is amended to read:

15679.1. (a) For purposes of this article, "reorganization" refers to any of the following:

(1) A conversion pursuant to Article 7.4 (commencing with Section 15677.1).

(2) A merger pursuant to Article 7.5 (commencing with Section 15678.1).

(3) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity that is in control of the acquiring limited partnership) of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other limited partnership or other business entity.

(4) The acquisition by one limited partnership in exchange in whole or in part for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity which is in control of the acquiring limited partnership) or for its debt securities (or debt securities of a limited partnership or other business entity which is in control of the acquiring limited partnership) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity.

(b) For purposes of this article, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited partnership or other business entity.

SEC. 3. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) (A) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(5) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership

services or who is lawfully able to render professional limited liability partnership services in this state.

(6) (A) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 2 (commencing with Section 15501) or Chapter 3 (commencing with Section 15611).

(8) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(9) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(10) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability

partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) "Professional limited liability partnership services" means the practice of architecture, the practice of public accountancy, or the practice of law.

(13) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Statement" means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(16) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(17) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2002.

SEC. 4. Section 16901 of the Corporations Code is amended to read:

16901. In this article, the following terms have the following meanings:

(1) "Constituent other business entity" means any other business entity that is merged with or into one or more partnerships and includes a surviving other business entity.

(2) "Constituent partnership" means a partnership that is merged with or into one or more other partnerships or other business entities and includes a surviving partnership.

(3) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(4) "Disappearing partnership" means a constituent partnership that is not the surviving partnership.

(5) "Domestic" means organized under the laws of this state when used in relation to any partnership, other business entity, or person (other than an individual).

(6) "Foreign other business entity" means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(7) "Foreign partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country.

(8) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(9) "Limited liability company" means a limited liability company created under Title 2.5 (commencing with Section 17000), or comparable law of another jurisdiction.

(10) "Limited partner" means a limited partner in a limited partnership.

(11) "Limited partnership" means a limited partnership created under Chapter 3 (commencing with Section 15611), predecessor law, or comparable law of another jurisdiction.

(12) "Other business entity" means a limited partnership, limited liability company, corporation, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a partnership.

(13) "Partner" includes both a general partner and a limited partner.

(14) "Surviving other business entity" means an other business entity into which one or more partnerships are merged.

(15) "Surviving partnership" means a partnership into which one or more other partnerships or other business entities are merged.

SEC. 5. Section 16903 of the Corporations Code is amended to read:

16903. (a) A partnership that desires to convert to a domestic limited partnership or limited liability company or foreign other business entity shall approve a plan of conversion. The plan of conversion shall state the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting partnership and the name of the converted entity after conversion, if different from that of the converting partnership.

(3) The manner of converting the partnership interests of each of the partners into securities of or interests in the converted entity.

(4) The provisions of the governing document for the converted entity, such as a limited partnership agreement or limited liability company articles of organization and operating agreement, to which the holders of interest in the converted entity are to be bound.

(5) Any other details or provisions as are required by laws under which the converted entity is organized.

(6) Any other details or provisions that are desired.

(b) The plan of conversion shall be approved by that number or percentage of partners required by the partnership agreement to approve a conversion of the partnership as set forth in the partnership agreement. If the partnership agreement fails to specify the required partner approval for a conversion of the partnership, the plan of conversion shall be approved by that number or percentage of partners required by the partnership agreement to approve an amendment to the partnership agreement unless the conversion effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, in which case the

plan of conversion shall be approved by that greater number or percentage. If the partnership agreement fails to specify the vote required to amend the partnership agreement, the plan of conversion shall be approved by all partners.

(c) If the partnership is converting into a limited partnership, in addition to the approval of the partners as set forth in subdivision (b), the plan of conversion shall be approved by all partners who will become general partners of the converted limited partnership pursuant to the plan of conversion.

(d) All partners of the converting partnership except those that dissociate upon effectiveness of the conversion pursuant to subdivision (e) of Section 16909 shall be deemed parties to any partnership or operating or organic document for the converted entity adopted as part of the plan of conversion, regardless of whether that partner has executed the plan of conversion or the operating or partnership agreement or other organic document for the converted entity. Any adoption of a new partnership, operating agreement, or other organic document made pursuant to the foregoing sentence shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the partnership in the same manner, and by the same number or percentage of partners, as was required for approval of the original plan of conversion.

(f) The partners of a converting partnership may, at any time before the conversion is effective, in their discretion, abandon a conversion, without further approval by the partners, in the same manner, and by the same number or percentage of partners, as was required for approval of the original plan of conversion at any time before the conversion is effective, subject to the contractual rights of third parties.

(g) The converted entity shall keep the plan of conversion at: (1) the principal place of business of the converted entity, if the converted entity is a foreign other business entity; or (2) the office at which records are to be kept under Section 15614 if the converted entity is a domestic limited partnership, or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a partner of a converting partnership, the authorized person on behalf of the converted entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a partner of the rights provided in this subdivision shall be unenforceable.

SEC. 6. Section 16905 of the Corporations Code is amended to read:

16905. (a) The conversion of a partnership into a foreign other business entity shall comply with Section 16902.

(b) If the partnership is converting into a foreign other business entity, then the conversion proceedings shall be in accordance with the laws of the state or place of organization of the foreign other business entity and the conversion shall become effective in accordance with that law.

(c) (1) Unless a statement of conversion has been filed to effect the conversion, the converted foreign partnership or foreign other business entity shall promptly notify the Secretary of State of the mailing address of its agent for service of process, its chief executive office, and of any change of address. To enforce an obligation of a partnership that has converted to a foreign partnership or foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against the converted foreign partnership or foreign other business entity, if the agent designated for the service of process for that entity is a natural person and cannot be found with due diligence or if the agent is a corporation and no person, to whom delivery may be made, may be located with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of that entity may be located after diligent search, and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall provide notice to the entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the providing of notice thereof to the entity, and the forwarding of the process, shall be competent and prima facie evidence of the matters stated therein.

SEC. 7. Section 16906 of the Corporations Code is amended to read:

16906. (a) If the converting partnership has filed a statement of partnership authority under Section 16303 that is effective at the time of the conversion, then upon conversion to a domestic limited partnership or limited liability company, the certificate of limited partnership or articles of organization filed by the converted entity, as applicable, shall contain a statement of conversion, in that form as may be prescribed by the Secretary of State. If the converting

partnership has not filed a statement of partnership authority under Section 16303 that is effective at the time of the conversion, upon conversion to a domestic limited partnership or limited liability company, the converted entity may, but is not required to file, on its certificate of limited partnership or articles of organization, a statement of conversion. A statement of conversion shall set forth all of the following:

(1) The name and the Secretary of State's file number, if any, of the converting partnership.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the partners, which equaled or exceeded the vote required under Section 16903.

(b) A partnership converting to a foreign other business entity that has filed a statement of partnership authority under Section 16303 that is effective at the time of conversion may file a certificate of conversion with the Secretary of State. The certificate of conversion shall contain the following:

(1) The names of the converting partnership and the converted entity.

(2) The street address of the converted entity's chief executive office and of an office in this state, if any.

(3) The form of organization of the converted entity.

(c) The filing with the Secretary of State of a certificate of limited partnership or articles of organization containing a statement of conversion as set forth in subdivision (a) or a certificate of conversion filed pursuant to subdivision (b) shall have the effect of the filing of a cancellation by the converting partnership of any statement of partnership authority filed by it.

SEC. 8. Section 16907 of the Corporations Code is amended to read:

16907. (a) Whenever a partnership or other business entity having any real property in this state converts into a partnership or an other business entity pursuant to the laws of this state or of the state or place in which the other business entity was organized, and the laws of the state or place of organization (including this state) of the converting partnership or other business entity provide substantially that the conversion of a converting entity vests in the converted partnership or other business entity all the real property of the converting partnership or converting other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the converting partnership or converting other business entity is located of either (1) a certificate of conversion or a certificate of limited partnership or articles of organization complying with Section 16906, in such form as prescribed by the Secretary of State, certified by the Secretary of State, or (2) a copy of a certificate of conversion, or a certificate of limited partnership, articles of organization, or other certificate evidencing the creation of a foreign other business entity by

conversion, containing a statement of conversion, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the conversion is effected, shall evidence record ownership in the converted partnership or converted other business entity of all interest of the converting partnership or converting other business entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded certificate of conversion, certificate of limited partnership, articles of organization, or other certificate evidencing the creation of an other business entity by conversion, containing a statement of conversion, executed and declared to be accurate pursuant to subdivision (c) of Section 16105, stating the name of the converting partnership or converting other business entity in whose name property was held before the conversion and the name of the converted entity, but not containing all of the other information required by Section 16906, operates with respect to the entities named to the extent provided in subdivision (a).

(c) Recording of a certificate of conversion, or a certificate of limited partnership, articles of organization, or other certificate evidencing the creation of another business entity by conversion, containing a statement of conversion, in accordance with paragraph (1) of Section 16902 shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the conversion was validly completed.

SEC. 9. Section 16911 of the Corporations Code is amended to read:

16911. (a) Each partnership and other business entity which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by the number or percentage of partners specified for merger in the partnership agreement of the constituent partnership. If the partnership agreement fails to specify the required partner approval for merger of the constituent partnership, then the agreement of merger shall be approved by that number or percentage of partners specified by the partnership agreement to approve an amendment to the partnership agreement. However, if the merger effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, then the merger shall be approved by that greater number or percentage. If the partnership agreement contains no provision specifying the vote required to amend the partnership agreement, then the agreement of merger must be approved by all the partners. The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving partnership or surviving other business entity, and of each disappearing partnership and disappearing other business entity, and the agreement of merger may change the name of the surviving partnership, which new name may be the same as or similar to the name of a disappearing partnership.

(3) The manner of converting the partnership interests of each of the constituent partnerships into interests or other securities of the surviving partnership or surviving other business entity, and if partnership interests of any of the constituent partnerships are not to be converted solely into interest or other securities of the surviving partnership or surviving other business entity, the cash, property, rights, interests, or securities which the holders of the partnership interest are to receive in exchange for the partnership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of interests of other securities of the surviving partnership or surviving other business entity, or that the partnership interests are canceled without consideration.

(4) Any other details or provisions as are required by the laws under which any constituent other business entity is organized.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) If the partnership is merging into a limited partnership, then in addition to the approval of the partners as set forth under subdivision (a), the agreement of merger must be approved by all partners who will become general partners of the surviving limited partnership upon the effectiveness of the merger.

(c) Notwithstanding its prior approval, an agreement of merger may be amended before the merger takes effect if the amendment is approved by the partners of each constituent partnership, in the same manner as required for approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The partners of a constituent partnership may in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent partnerships and constituent other business entities, if the abandonment is approved by the partners of the constituent partnership in the same manner as required for approval of the original agreement of merger.

(e) An agreement of merger approved in accordance with subdivision (a) may (1) effect any amendment to the partnership agreement of any domestic constituent partnership or (2) effect the adoption of a new partnership agreement for a domestic constituent partnership if it is the surviving partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger.

(f) The surviving partnership or surviving other business entity shall keep the agreement of merger at the principal place of business of the surviving entity if the surviving entity is a partnership or a foreign other business entity, at the office referred to in Section 1500 if the surviving entity is a domestic corporation, at the office referred to in subdivision (a) of Section 15614 if the surviving entity is a domestic limited partnership, or at the office referred to in Section 17057 if the surviving entity is a domestic limited liability company and, upon the request of a partner of a constituent partnership or a holder of interests or other securities of a constituent other business entity, the authorized person on behalf of the partnership or the surviving other business entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the surviving partnership or surviving other business entity, a copy of the agreement of merger. A waiver by a partner or holder of interests or other securities of the rights provided in this subdivision shall be unenforceable.

SEC. 10. Section 16914 of the Corporations Code is amended to read:

16914. (a) When a merger takes effect, all of the following apply:

(1) The separate existence of the disappearing partnerships and disappearing other business entities ceases and the surviving partnership or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property whether real, personal, or mixed, of each of the disappearing partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving partnership or surviving other business entity had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent partnerships and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving partnership or the surviving other business entity to the same extent as if the debt, liability, or duty that gave rise to that lien had been incurred or contracted by it, provided that the liens upon the property of a disappearing partnership or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing partnership or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving partnership or surviving other business entity, or the surviving partnership or surviving other business entity may be proceeded against or be substituted in the disappearing partnership's or the disappearing other business entity's place.

(b) (1) Unless a certificate of merger has been filed to effect the merger, the surviving foreign entity shall promptly notify the Secretary of State of the mailing address of its agent for service of

process, its chief executive office, and of any change of address. To enforce an obligation of a partnership that has merged with a foreign partnership or foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against the surviving foreign partnership or foreign other business entity, if the agent designated for the service of process for that entity is a natural person and cannot be located with due diligence or if the agent is a corporation and no person, to whom delivery may be made, can be located with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of the entity can be located after diligent search, and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall provide notice to the entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the providing of notice thereof to the entity, and the forwarding of the process, shall be competent and prima facie evidence of the matters stated therein.

(c) A partner of the surviving partnership or surviving limited partnership, a member of the surviving limited liability company, a shareholder of the surviving corporation, or a holder of equity securities of the surviving other business entity is liable for all of the following:

(1) All obligations of a party to the merger for which that person was personally liable before the merger.

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity.

(3) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if that person is a limited partner, a shareholder in a corporation, or, unless expressly provided otherwise in the articles of organization or other governing documents, a member of a limited liability company or a holder of equity securities in a surviving other business entity.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or surviving other business entity, the general partners of that party immediately before the effective date of the merger, to the extent such party was a partnership or a limited partnership, shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 16807 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a domestic disappearing partnership, who does not vote in favor of the merger and does not agree to become a partner, member, shareholder, or holder of interest or equity securities of the surviving partnership or surviving other business entity shall have the right to dissociate from the partnership, as of the date the merger takes effect. Within 10 days after the approval of the merger by the partners as required under this article, each domestic disappearing partnership shall send notice of the approval of the merger to each partner that has not approved the merger, accompanied by a copy of Section 16701 and a brief description of the procedure to be followed under that section if the partner wishes to dissociate from the partnership. A partner that desires to dissociate from a disappearing partnership shall send written notice of such dissociation within 30 days after the date of the notice of the approval of the merger. The disappearing partnership shall cause the partner's interest in the entity to be purchased under Section 16701. The surviving entity is bound under Section 16702 by an act of a general partner dissociated under this subdivision, and the partner is liable under Section 16703 for transactions entered into by the surviving entity after the merger takes effect. The dissociation of a partner in connection with a merger pursuant to the terms of this subdivision shall not be deemed a wrongful disassociation under Section 16602.

SEC. 11. Section 16915 of the Corporations Code is amended to read:

16915. (a) In a merger involving only partnerships, or in a merger to which a domestic partnership and an other business entity is a party but in which no other domestic other business entity is a party, the surviving partnership or surviving foreign other business entity may file with the Secretary of State a statement that one or more partnerships have merged into the surviving partnership or surviving other business entity. A statement of merger shall contain the following:

(1) The name of each partnership or other business entity that is a party to the merger.

(2) The name of the surviving entity into which the other partnerships or other business entities where merged.

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any.

(4) Whether the surviving entity is a partnership or an other business entity, specifying the type of the entity.

(b) In a merger involving a domestic partnership in which a domestic other business entity is also a party, after approval of the merger by the constituent partnerships and any constituent other business entities, the constituent partnerships and constituent other business entities shall file a certificate of merger in the office of but on a form prescribed by, the Secretary of State, and if the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required pursuant to paragraph (1) of subdivision (g) of Section 1113. The certificate of merger shall be executed and acknowledged by each domestic constituent partnership by two partners (unless a lesser number is provided in the partnership agreement) and by each foreign constituent partnership by one or more partners, and by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent partnerships and constituent other business entities, separately identifying the disappearing partnerships and disappearing other business entities and the surviving partnership or surviving other business entity.

(2) If a vote of the partners was required under Section 16911, a statement that the principal terms of the agreement of merger were approved by a vote of the partners, which equaled or exceeded the vote required.

(3) If the surviving entity is a domestic partnership and not an other business entity, any change to the information set forth in any filed statement of partnership authority of the surviving partnership resulting from the merger, including any change in the name of the surviving partnership resulting from the merger. The filing of a certificate of merger setting forth any changes to any filed statement of partnership authority of the surviving partnership shall have the effect of the filing of a certificate of amendment of the statement of partnership authority by the surviving partnership, and the surviving partnership need not file a certificate of amendment under Section 16015 to reflect those changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign partnership, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are

governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized.

(c) A statement of merger or a certificate of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a cancellation for each disappearing partnership of any statement of partnership authority filed by it.

SEC. 12. Section 16916 of the Corporations Code is amended to read:

16916. (a) Whenever a domestic or foreign partnership or other business entity having any real property in this state merges with another partnership or other business entity pursuant to the laws of this state or of the state or place in which any constituent partnership or constituent other business entity was organized, and the laws of the state or place of organization (including this state) of any disappearing partnership or disappearing other business entity provide substantially that the making and filing of a statement of merger, agreement of merger, or certificate of merger vests in the surviving partnership or surviving other business entity all the real property of any disappearing partnership and disappearing other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing partnership or disappearing other business entity is located of either (1) a certificate of merger or agreement of merger certified by the Secretary of State, or other certificate prescribed by the Secretary of State, or (2) a copy of the statement of merger, agreement of merger, or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving partnership or surviving other business entity of all interest of such disappearing partnership or disappearing other business entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subdivision (c) of Section 16105, stating the name of a partnership or other business entity that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by Section 16915, operates with respect to the partnerships or other business entities named to the extent provided in subdivision (a).

(c) Recording of the certificate of merger in accordance with subdivision (a) shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed.

SEC. 13. Chapter 11.5 (commencing with Section 17540.1) is added to Title 2.5 of the Corporations Code, to read:

CHAPTER 11.5. CONVERSION

17540.1. For purposes of this chapter, the following definitions shall apply:

(a) "Converted entity" means the other business entity or foreign limited liability company that results from a conversion of a domestic limited liability company under this chapter.

(b) "Converted limited liability company" means a domestic limited liability company that results from a conversion of an other business entity or a foreign limited liability company pursuant to Section 17540.8.

(c) "Converting limited liability company" means a domestic limited liability company that converts to an other business entity or a foreign limited liability company pursuant to this chapter.

(d) "Converting entity" means an other business entity or foreign limited liability company that converts to a domestic limited liability company pursuant to the terms of Section 17540.8.

17540.2. A limited liability company may be converted into an other business entity or a foreign limited liability company pursuant to this chapter if, pursuant to the proposed conversion, each of the members of the converting limited liability company would receive a percentage interest in profits and capital of the converted entity equal to that member's percentage interest in profits and capital of the converting limited liability company as of the effective time of the conversion. Notwithstanding this section, the conversion of a limited liability company to an other business entity or a foreign limited liability company may be effected only if both of the following conditions are complied with:

(a) The law under which the converted entity will exist expressly permits the formation of that entity pursuant to a conversion.

(b) The limited liability company complies with any and all other requirements of any other law that applies to conversion to the converted entity.

17540.3. (a) A limited liability company that desires to convert to an other business entity or a foreign limited liability company shall approve a plan of conversion.

The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting limited liability company and the name of the converted entity after conversion.

(3) The manner of converting the membership interests of each of the members into securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the partnership agreement, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the parties.

(b) The plan of conversion shall be approved by a vote of a majority in interest of the members of the converting limited liability company, or a greater percentage of the voting interests of members as may be specified in the articles of organization or written operating agreement of the converting limited liability company. However, if the members of the limited liability company would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the members of the converting limited liability company, unless the plan of conversion provides that all members will have dissenters' rights as provided in Chapter 13 (commencing with Section 17600).

(c) If the limited liability company is converting into a limited partnership, then in addition to the approval of the members set forth in subdivision (b), the plan of conversion shall be approved by those members who will become general partners of the converted limited partnership pursuant to the plan of conversion.

(d) Upon the effectiveness of the conversion, all members of the converting limited liability company, except those that exercise dissenters' rights as provided in Chapter 13 (commencing with Section 17600) shall be deemed parties to any governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not a member has executed the plan of conversion or such governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the members of the converting limited liability company in the same manner as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the members of a converting limited liability company in the manner as required for approval of the plan of conversion, subject to the contractual rights of third parties, at any time before the conversion is effective.

(g) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic partnership or foreign other business entity or at the office at which records are to be kept under Section 15614 if the converted entity is a domestic limited partnership. Upon the request of a member of a converting limited liability company, the authorized person on behalf of the converted entity shall promptly

deliver to the member or the holder of interests or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a member of the rights provided in this subdivision shall be unenforceable.

17540.4. (a) A conversion into an other business entity or a foreign limited liability company shall become effective upon the earliest date that all of the following occur:

(1) The approval of the plan of conversion by the members of the converting limited liability company as provided in Section 17540.3.

(2) The filing of all documents required by law to effect the conversion and create the converted entity, which documents shall also contain a statement of conversion, if required under Section 17540.6.

(3) The occurrence of the effective date, if set forth in the plan of conversion.

(b) A copy of the statement of partnership authority or certificate of limited partnership complying with Section 17540.6, if applicable, duly certified by the Secretary of State, is conclusive evidence of the conversion of the limited liability company.

17540.5. (a) The conversion of a limited liability company into a foreign other business entity or a foreign limited liability company shall be required in order to comply with Section 17540.2.

(b) If the limited liability company is converting into a foreign other business entity or a foreign limited liability company, those conversion proceedings shall be in accordance with the laws of the state or place of organization of the foreign other business entity or foreign limited liability company and the conversion shall become effective in accordance with that law.

(c) (1) To enforce an obligation of a limited liability company that has converted to a foreign limited liability company or foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against that converted foreign entity, if the agent designated for the service of process for the entity is a natural person and cannot be located with due diligence or if the agent is a corporation and no person, to whom delivery may be made, may be located with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of that entity may be located after diligent search, and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall

give notice to such entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to that entity, and the forwarding of the process, shall be competent and prima facie evidence of the matters stated therein.

17540.6. (a) Upon conversion of a limited liability company:

(1) If the limited liability company is converting into a domestic limited partnership, a statement of conversion shall be completed on the certificate of limited partnership for the converted entity.

(2) If the limited liability company is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed then a certificate of conversion shall be filed separately.

(3) If the limited liability company is converting into a foreign limited liability company or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State.

(b) Any certificate or statement of conversion shall be executed and acknowledged by all of the managers, unless a lesser number is provided in the articles of organization or the operating agreement of the converting limited liability company, and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting limited liability company.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the members, which equaled or exceeded the vote required under Section 17540.3, specifying each class entitled to vote and the percentage vote required of each class.

(3) The form of organization of the converted entity.

(c) The filing with the Secretary of State of a certificate of conversion or an organizational document containing a statement of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting limited liability company and no converting limited liability company that has made the filing is required to file a certificate of dissolution or a certificate of cancellation under Section 17356 as a result of that conversion.

17540.7. (a) Whenever a limited liability company or other business entity having any real property in this state converts into a limited liability company or an other business entity pursuant to the laws of this state or of the state or place in which the limited liability company or other business entity was organized, and the laws of the state or place of organization, including this state, of the converting limited liability company or other converting entity provide

substantially that the conversion vests in the converted limited liability company or other converted entity all the real property of the converting limited liability company or other converting entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the converting limited liability company or other converting entity is located of either (1) a certificate of conversion, statement of partnership authority, certificate of limited partnership, or articles of organization complying with Section 17540.6, in the form prescribed and certified by the Secretary of State, or (2) a copy of a certificate of conversion, or a statement of partnership authority, certificate of limited partnership, articles of organization, or other certificate evidencing the creation of a foreign other business entity or foreign limited liability company by conversion, containing a statement of conversion, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the conversion is effected, shall evidence record ownership in the converted limited liability company or other converted entity of all interest of the converting limited liability company or other converting entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded certificate of conversion, or a statement of partnership authority, certificate of limited partnership or articles of organization or other certificate evidencing the formation of a foreign other business entity or a foreign limited liability company filed pursuant to Section 17540.6 containing a statement of conversion, stating the name of the converting limited liability company or other converting entity in whose name property was held before the conversion and the name of the converted entity or converted limited liability company, but not containing all of the other information required by Section 17540.6, operates with respect to the converted entities named to the extent provided in subdivision (a).

(c) Recording of a certificate of conversion or a statement of partnership authority, certificate of limited partnership or articles of organization, or other certificate evidencing the creation of an other business entity or a limited liability company by conversion, containing a statement of conversion, in accordance with subdivision (a), shall create, in favor of bona fide purchasers or encumbrances for value, a conclusive presumption that the conversion was validly completed.

17540.8. (a) An other business entity or foreign limited liability company may be converted to a domestic limited liability company pursuant to this chapter only if the converting entity is not prohibited by the law under which it is organized to effect the conversion.

(b) An other business entity or a foreign limited liability company that desires to convert into a domestic limited liability company shall approve a plan of conversion or such instrument as is required to be

approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign limited liability company shall be approved by that number or percentage of the partners, members, or holders of interest of the converting entity as is required by the law under which that entity is organized, or a greater or lesser percentage, subject to applicable laws, as set forth in the converting entity's partnership agreement, articles of organization, operating agreement, or other governing document.

(d) The conversion by an other business entity or foreign limited liability company shall be effective under this chapter at the time the conversion is effective under the law under which the converting entity is organized as long as the articles of organization have been filed with the Secretary of State. If the converting entity's governing law is silent as to the effectiveness of the conversion, the conversion shall be effective upon the completion of all acts required under this title to form a limited liability company.

17540.9. (a) An entity that converts into another entity pursuant to this chapter is for all purposes the same entity that existed before the conversion.

(b) Upon a conversion taking effect, all of the following apply:

(1) All the rights and property, whether real, personal, or mixed, of the converting entity or converting limited liability company are vested in the converted entity or converted limited liability company.

(2) All debts, liabilities, and obligations of the converting entity or converting limited liability company continue as debts, liabilities, and obligations of the converted entity or converted limited liability company.

(3) All rights of creditors and liens upon the property of the converting entity or converting limited liability company shall be preserved unimpaired and remain enforceable against the converted entity or converted limited liability company to the same extent as against the converting entity or converting limited liability company as if the conversion had not occurred.

(4) Any action or proceeding pending by or against the converting entity or converting limited liability company may be continued against the converted entity or converted limited liability company as if the conversion had not occurred.

(c) A member of a converting limited liability company is liable for:

(1) All obligations of the converting limited liability company for which the member was personally liable before the conversion.

(2) All obligations of the converted entity incurred after the conversion takes effect, but those obligations may be satisfied only out of property of the entity if that member is a limited partner, a shareholder in a corporation, or unless expressly provided otherwise in the articles of organization or other governing documents, a

member of a converted limited liability company or a holder of equity securities in an other converted entity if the holders of equity securities in such entity are not personally liable for the obligations of such entity under the law under which that entity is organized or its governing documents.

(d) A member of a converted limited liability company remains liable for any and all obligations of the converting entity for which the member was personally liable before the conversion, but only to the extent that the member was personally liable for the obligations of the converting entity prior to the conversion.

(e) If the other party to a transaction with the limited liability company reasonably believes when entering the transaction that the limited liability company member is a general partner, the limited liability company member is liable for an obligation incurred by the limited liability company within 90 days after the conversion takes effect. The limited liability company member's liability for all other obligations of the limited liability company incurred after the conversion takes effect is that of a limited liability company member.

SEC. 14. Section 17600 of the Corporations Code is amended to read:

17600. (a) For purposes of this chapter, "reorganization" refers to any of the following:

(1) A conversion pursuant to Chapter 11.5 (commencing with Section 17540.1).

(2) A merger pursuant to Chapter 12 (commencing with Section 17550).

(3) The acquisition by one limited liability company, in exchange, in whole or part, for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company), of membership interests or equity securities of another limited liability company or other business entity if, immediately after the acquisition, the acquiring limited liability company has control of the other limited liability company or other business entity.

(4) The acquisition by one limited liability company in exchange in whole or in part for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) or for its debt securities (or debt securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) that are not adequately secured and that have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited liability company or other business entity.

(b) For purposes of this chapter, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the

management and policies of a limited liability company or other business entity.

CHAPTER 251

An act to amend Section 66602 of the Education Code, relating to the California State University.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 66602 of the Education Code is amended to read:

66602. (a) The board shall be composed of the following four ex officio members: the Governor, the Lieutenant Governor, the Superintendent of Public Instruction, and the person named by the trustees to serve as the Chancellor of the California State University; a representative of the alumni associations of the state university and colleges, selected for a two-year term by the alumni council, California State University, which representative shall not be an employee of the California State University during the two-year term; and 16 appointive members appointed by the Governor and subject to confirmation by two-thirds of the membership of the Senate.

(b) (1) There shall also be appointed by the Governor for two-year terms, two students from California state universities or colleges who shall have at least a junior year standing at the institutions they attend, and who remain in good standing as students during the two-year term.

(2) In the selection of students as members of the board, the Governor shall appoint the students from lists of names of at least two, but not more than five, persons furnished by the governing board of any statewide student organization that represents the students of the California State University and the student body organizations of the campuses of the California State University. Any appointment to fill a vacancy of a student member shall be effective only for the remainder of the term of the person's office that became vacated.

(3) The term of office of one student member of the board shall commence on July 1 of an even-numbered year and expire on June 30 two years thereafter. The term of office of the other student member of the board shall commence on July 1 of an odd-numbered year and expire on June 30 two years thereafter. Notwithstanding paragraph (1), a student member who graduates from his or her college or university on or after January 1 of the second year of his or her term of office may serve the remainder of the term.

(4) During the first year of a student member's term, a student member shall be a member of the board and may attend all meetings of the board and its committees. At these meetings, a student member may fully participate in discussion and debate, but may not vote. During the second year of a student member's term, a student member may exercise the same right to attend meetings of the board, and its committees, and shall have the same right to vote as the members appointed pursuant to subdivision (a).

(5) Notwithstanding paragraph (4), if a student member resigns from office or a vacancy is otherwise created in that office during the second year of a student member's term, the remaining student member shall immediately assume the office created by the vacancy and all of the participation privileges of the second-year student member, including the right to vote, for the remainder of that term of office.

(c) The Speaker of the Assembly shall be an ex officio member, having equal rights and duties with nonlegislative members.

(d) (1) There shall also be appointed by the Governor for a two-year term, a faculty member from the California State University who shall be tenured at the California state university or college at which he or she teaches. In the selection of a faculty member as a member of the board, the Governor shall appoint the faculty member from a list of names of at least two persons furnished by the Academic Senate of the California State University.

(2) The faculty member of the board appointed by the Governor pursuant to this subdivision shall not participate on any subcommittee of the board responsible for collective bargaining negotiations.

(3) The term of office of the faculty member of the board shall commence on July 1 and expire on June 30 two years thereafter.

CHAPTER 252

An act to amend Sections 800 and 805 of the Business and Professions Code, relating to licensing.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Dental Examiners, the Osteopathic Medical Board of California, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric

Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to (1) any conviction of a crime in this or any other state which constitutes unprofessional conduct pursuant to the reporting requirements of Section 803; (2) any judgment or settlement requiring the licensee or his or her insurer, to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802; (3) any public complaints for which provision is hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file which are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information which the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

SEC. 2. Section 805 of the Business and Professions Code is amended to read:

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

(1) "Peer review body" includes:

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

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

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

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

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

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

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

contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

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

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

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

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

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

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

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

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

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

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

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

The information to be reported in an 805 report shall include the name of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

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

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

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

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

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

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

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

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

CHAPTER 253

An act to amend Sections 17312 and 17409 of the Financial Code, relating to escrow agents.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 17312 of the Financial Code is amended to read:

17312. (a) Each person licensed pursuant to this division who is engaged in the business of receiving escrows specified in subdivision (c) shall participate as a member in Fidelity Corporation in accordance with this chapter and rules established by the board of directors of Fidelity Corporation. Fidelity Corporation shall not deny membership to any escrow agent holding a valid unrevoked license under the Escrow Law who is required to be a member under this subdivision.

(b) Upon filing a new application for licensure as required by subdivision (b) of Section 17213, persons required to be a member of Fidelity Corporation shall file a copy thereof concurrently with Fidelity Corporation, but no additional membership fee or deposit shall be required.

(c) The required membership in Fidelity Corporation shall be limited to those licensees who engage, in whole or in part, in the business of receiving escrows for deposit or delivery in the following types of transactions:

(1) Real property escrows, including, but not limited to, the sale, lease, exchange, or transfer of title, and loans or other obligations to be secured by a lien upon real property.

(2) Bulk sale escrows, including, but not limited to, the sale or transfer of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits.

(3) Fund or joint control escrows, including, but not limited to, transactions specified in Section 17005.1, and contracts specified in Section 10263 of the Public Contract Code.

(4) The sale, transfer of title, or refinance escrows for manufactured homes or mobilehomes.

(5) Reservation deposits required under Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code or by regulation of the Department of Real Estate to be held in an escrow account.

(6) Escrows for sale, transfer, modification, assignment, or hypothecation of promissory notes secured by deeds of trust.

(d) Coverage required to be provided by Fidelity Corporation under this chapter shall be provided to members only for loss of trust obligations with respect to those types of transactions specified in subdivision (c). Indemnity coverage for those types of transactions not specified in subdivision (c) shall be provided by escrow agents in accordance with Section 17203.1.

SEC. 2. Section 17409 of the Financial Code is amended to read:

17409. (a) All moneys deposited in escrow to be delivered upon the close of the escrow or upon any other contingency, shall be deposited and maintained in a noninterest-bearing demand or

checking account in a bank, a state or federal savings bank, or a state or federal savings association or in a noninterest-bearing account subject to immediate withdrawal in an industrial loan company insured by the Federal Deposit Insurance Corporation and approved to receive those moneys by the commissioner. Thereafter, these moneys may be deposited in an interest-bearing account in a bank, a state or federal savings bank, a state or federal savings association, an industrial loan company approved to receive those moneys by the commissioner, or a state or federal credit union, if the depositor is qualified for membership under the bylaws of that credit union, and the moneys are maintained separate, distinct, and apart from funds belonging to the escrow agent. Those funds, when deposited, are to be designated as "trust funds," "escrow accounts," or under some other appropriate name indicating that the funds are not the funds of the escrow agent.

Upon request of the commissioner, a licensee shall furnish to the commissioner an authorization for examination of financial records of any trust funds or escrow accounts, maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(b) A licensee engaged in the business of receiving escrows for deposit or delivery of the types specified in subdivision (c) of Section 17312 and of the types not specified therein shall maintain separate escrow trust accounts, for both types of escrow business in the same manner as provided in subdivision (a) of this section and Sections 17409.1, 17410, 17411, and 17411.1.

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.

CHAPTER 254

An act to amend Sections 480, 502, and 502.01 of the Penal Code, relating to crimes.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. This act shall be known and may be cited as the "Officer Don Burt Act of 1999."

SEC. 2. Section 480 of the Penal Code is amended to read:

480. (a) Every person who makes, or knowingly has in his or her possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this state, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the state prison for two, three, or four years; and all dies, plates, apparatus, papers, metals, or machines intended for the purpose aforesaid, must be destroyed.

(b) (1) If the counterfeiting apparatus or machine used to violate this section is a computer, computer system, or computer network, the apparatus or machine shall be disposed of pursuant to Section 502.01.

(2) For the purposes of this section, "computer system" and "computer network" have the same meaning as that specified in Section 502. The terms "computer, computer system, or computer network" include any software or data residing on the computer, computer system, or computer network used in a violation of this section.

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 punish any acts which are committed by a person within the scope of his or her lawful employment. For purposes of this section, a person acts within the scope of his or her employment when he or she performs acts which are reasonably necessary to the performance of his or her work assignment.

(2) Paragraph (3) of subdivision (c) does not apply to penalize any acts committed by a person acting outside of his or her lawful employment, provided that the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or provided that the value of supplies or computer services, as defined in paragraph (4) of subdivision (b), which are used does 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. Section 502.01 of the Penal Code is amended to read:

502.01. (a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of Section 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) "Sentencing court" means the court sentencing a person found guilty of violating Section 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) "Interest" means any property interest in the property subject to forfeiture.

(4) "Security interest" means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) "Value" has the following meanings:

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

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

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture

under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and shall send a copy of the motion to the prosecuting agency and to the probation department.

If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of Section 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

(1) The court shall determine the value of the property.

(2) The court shall determine the value of each valid interest in the property.

(3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of Section 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

(g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(h) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (g).

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.

CHAPTER 255

An act to amend Sections 384 and 1765.1 of, and to add Sections 48 and 1762 to, the Insurance Code, relating to insurance.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 48 is added to the Insurance Code, to read:

48. A "surplus line broker certificate" means a certificate issued by a surplus line broker to an insurance purchaser as evidence of the placement of insurance with an eligible nonadmitted insurer in accordance with the requirements of Sections 1764, 1764.1, and 1764.2.

SEC. 2. Section 384 of the Insurance Code is amended to read:

384. (a) A certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual copy of the

insurance policy shall contain the following statements or words to the effect of:

This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

(b) This section is not applicable to a surplus line broker certificate as defined in Section 48.

SEC. 3. Section 1762 is added to the Insurance Code, to read:

1762. For purposes of Sections 1764, 1764.1, and 1764.3, the term "certificate" means a surplus line broker certificate as defined in Section 48.

SEC. 4. Section 1765.1 of the Insurance Code is amended to read:

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at the time of placement, the nonadmitted insurer:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) (A) Has capital and surplus that together total at least fifteen million dollars ($15,000,000). "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described

in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. If less than fifteen million dollars ($15,000,000), the commissioner has affirmatively found that the capital and surplus is adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality of management, the capital and surplus of any parent company, the underwriting profit and investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer, or

(B) In the case of an "Insurance Exchange" created and authorized under the laws of individual states, maintains capital and surplus of not less than fifty million dollars ($50,000,000) in the aggregate. "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. In the case of an Insurance Exchange which maintains funds for the protection of all Insurance Exchange policyholders,

each individual syndicate seeking to accept surplus line placements of risks resident, located or to be performed in this state shall maintain minimum capital and surplus of not less than six million four hundred thousand dollars ($6,400,000). Each individual syndicate shall increase the capital and surplus required by this paragraph by one million dollars ($1,000,000) each year until it attains a capital and surplus of fifteen million dollars ($15,000,000). In the case of Insurance Exchanges that do not maintain funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placement of risks resident, located or to be performed in this state shall meet the capital and surplus requirements of subparagraph (A) of this paragraph.

(C) In the case of a syndicate that is part of a group consisting of incorporated individual insurers, or a combination of both incorporated and unincorporated insurers, that at all times maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution as security to the full amount thereof for the United States surplus line policyholders and beneficiaries of direct policies of the group, including all policyholders and beneficiaries of direct policies of the syndicate, and the full balance in the trust fund is available to satisfy the liabilities of each member of the group of those syndicates, incorporated individual insurers or other unincorporated insurers, without regard to their individual contributions to that trust fund, and the trust complies with the terms of and conditions specified in paragraph (1) of subdivision (b), the syndicate is excepted from the capital and surplus requirements of subparagraph (A) of paragraph (2). The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(b) (1) In addition, to be eligible as a surplus line insurer, an insurer not domiciled in one of the United States or its territories shall have in force in the United States an irrevocable trust account in a qualified United States financial institution, for the protection of United States policyholders, of not less than five million four hundred thousand dollars ($5,400,000) and consisting of cash, securities acceptable to the commissioner which are authorized pursuant to Sections 1170 to 1182, inclusive, readily marketable securities acceptable to the commissioner that are listed on a regulated United States national or principal regional security exchange, or clean and irrevocable letters of credit acceptable to the commissioner and issued by a qualified United States financial institution. The trust agreement shall be in a form acceptable to the commissioner. The funds in the trust account may be included in any calculation of capital and surplus, except letters of credit, which shall not be included in any calculation.

(2) In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the syndicate shall, in addition to the requirements of that subparagraph, at a minimum, maintain in the United States a trust account in an amount satisfactory to the commissioner that is not less than the amount required by the domiciliary state of the syndicate's trust. The trust account shall comply with the terms and conditions specified in paragraph (1) of subdivision (b).

(3) In the case of a group of incorporated insurers under common administration that maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution for the payment of claims of its United States policyholders, their assigns, or successors in interest and that complies with the terms and conditions of paragraph (1) that has continuously transacted an insurance business outside the United States for at least three years, that is in good standing with its domiciliary regulator, whose individual insurer members maintain standards and financial condition reasonably comparable to admitted insurers, that submits to this state's authority to examine its books and bears the expense of examination, and that has an aggregate policyholder surplus of ten billion dollars ($10,000,000,000), the group is excepted from the capital and surplus requirements of subdivision (a).

(c) Has caused to be provided to the commissioner the following documents:

(1) The financial documents as specified below, each showing the insurer's condition as of a date not more than 12 months prior to submission:

(A) A copy of an annual statement, prepared in the form prescribed by the NAIC. For an alien insurer, in lieu of an annual statement, a licensee may submit a form as set forth by regulation and as prepared by the insurer, and, if listed by the IID, a copy of the complete information as required in the application for listing by the IID.

(B) A copy of an audited financial report on the insurer's condition that meets the standards of subparagraph (D) for foreign insurers or subparagraph (E) for alien insurers.

(C) If the insurer is an alien:

(i) A certified copy of the trust agreement referenced in subdivision (b).

(ii) A verified copy of the most recent quarterly statement or list of the assets in the trust.

(D) Financial reports filed pursuant to this section by foreign insurers shall conform to the following standards:

(i) Financial documents shall be certified.

(ii) An audited financial report shall constitute a supplement to the insurer's annual statement, as required by the annual statement instructions issued by the NAIC.

(iii) An audited financial report shall be prepared by an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states where licensed to practice; and be prepared in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator of the insurer's domiciliary jurisdiction.

(iv) An audited financial report shall include information on the insurer's financial position as of the end of the most recent calendar year, and the results of its operations, cash-flows, and changes in capital and surplus for the year then ended.

(v) An audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with its domiciliary jurisdiction, and presenting comparatively the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the preceding year.

(E) Financial reports filed pursuant to this section by alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified, if certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI Guide to Alien Reporting Format, "Standard Definitions of Accounting Items." Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer's domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants; and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements which apply to the supplemented document, and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction does not issue those certificates, from any state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) A certified or verified explanation, report, or other statement, from the insurance regulatory office or official of the insurer's domiciliary jurisdiction, concerning the insurer's record regarding market conduct and consumer complaints; or, if that information cannot be obtained from that jurisdiction, then any other information that the licensee can procure to demonstrate a good reputation for payment of claims and treatment of policyholders.

(6) A verified statement, from the insurer or licensee, on whether the insurer or any affiliated entity is currently known to be the subject of any order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The statement shall identify the proceeding by date, jurisdiction, and relief or sanction sought; and shall attach a copy of the relevant order.

(7) A certified copy of the most recent report of examination or an explanation if the report is not available.

(8) A list of all California surplus line brokers authorized by the insurer to issue policies on its behalf, and any additions to or deletions from that list.

(d) (1) Has provided any additional information or documentation required by the commissioner that is relevant to the financial stability, reputation, and integrity of the nonadmitted insurer. In making a determination concerning financial stability, reputation, and integrity of the nonadmitted insurer, the commissioner shall consider any analysis, findings, or conclusion made by the National Association of Insurance Commissioners (NAIC) in its review of the insurer for purposes of inclusion on or

exclusion from the list of authorized nonadmitted insurers maintained by the NAIC. The commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of the NAIC, as the commissioner deems appropriate. In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of any state, as the commissioner deems appropriate, as long as that state, in its method of regulation and review, meets the requirements of paragraph (2).

(2) The regulatory body of the state shall regularly receive and review the following: (A) an audited financial statement of the syndicate, prepared by a certified or chartered public accountant; (B) an opinion of a qualified actuary with regard to the syndicate's aggregate reserves for payment of losses or claims and payment of expenses of adjustment or settlement of losses or claims; (C) a certification from the qualified United States financial institution that acts as the syndicate's trustee, respecting the existence and value of the syndicate's trust fund; and (D) information concerning the syndicate's or its manager's operating history, business plan, ownership and control, experience and ability, together with any other pertinent factors, and any information indicating that the syndicate or its manager make reasonably prompt payment of claims in this state or elsewhere. The regulatory body of the state shall have the authority, either by law or through the operation of a valid and enforceable agreement, to review the syndicate's assets and liabilities and audit the syndicate's trust account, and shall exercise that authority with a frequency and in a manner satisfactory to the commissioner.

(e) Has established that:

(1) All documents required by subdivisions (c) and (d) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents affirm that the insurer has actively transacted insurance for the three years immediately preceding the filing made under this section, unless an exemption is granted. As used in this paragraph, "insurer" does not include a syndicate of underwriting entities. The commissioner may grant an exemption if the licensee has applied for exemption and demonstrates either of the following:

(A) The insurer meets the condition for any exception set forth in subdivision (a), (b), or (c) of Section 716.

(B) If the insurer has been actively transacting insurance for at least 12 months, and the licensee demonstrates that the exemption

is warranted because the insurer's current financial strength, operating history, business plan, ownership and control, management experience, and ability, together with any other pertinent factors, make three years of active insurance transaction unnecessary to establish sufficient reputation.

(4) The documents confirm that the insurer holds a license to issue insurance policies (other than reinsurance) to residents of the jurisdiction that granted the license unless an exemption is granted. The commissioner may grant an exemption if the licensee has applied for an exemption and demonstrates that the exemption is warranted because the insurer proposes to issue in California only commercial coverage, and is wholly owned and actually controlled by substantial and knowledgeable business enterprises that are its policyholders and that effectively govern the insurer's destiny in furtherance of their own business objectives.

(5) The information filed pursuant to paragraph (5) of subdivision (c) or otherwise filed with or available to the commissioner, including reports received from California policyholders, shall indicate that the insurer makes reasonably prompt payment of claims in this state or elsewhere.

(6) The information available to the commissioner shall not indicate that the insurer offers in California a licensee products or rates that violate any provision of this code.

(f) Has been placed on the list of eligible surplus line insurers by the commissioner. The commissioner shall establish a list of all surplus line insurers that have met the requirements of subdivisions (a) to (e), inclusive, and shall publish a master list at least semiannually. Any insurer receiving approval as an eligible surplus line insurer shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. If an insurer appears on the most recent list, it shall be presumed that the insurer is an eligible surplus line insurer, unless the commissioner or his or her designee has mailed or causes to be mailed notice to all surplus line brokers that the commissioner has withdrawn the insurer's eligibility. Upon receipt of notice, the surplus line broker shall make no further placements with the insurer. Nothing in this subdivision shall limit the commissioner's discretion to withdraw an insurer's eligibility.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the eligibility requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the list. Notice of hearing shall be served upon the insurer or its agent for service of process

stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or an insured or prospective insured of the insurer, or, in the case of an application by an insurer to be placed on the list which is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. Any order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in any case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may so specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) any insurer that has failed or refused to timely provide documents required by this section, or any regulations adopted to implement this section. In the case of removal pursuant to this paragraph, the commissioner shall notify all surplus line brokers of the action.

(h) In addition to any other statements or reports required by this chapter, the commissioner may also address to any licensee a written request for full and complete information respecting the financial stability, reputation and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance business. The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order the licensee in writing to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with the nonadmitted insurer on behalf of any person. Any placement in the nonadmitted insurer made by a licensee after receipt of that order is a violation of this chapter. The commissioner may issue an order when documents

submitted pursuant to subdivisions (c) and (d) do not meet the criteria of subdivisions (a) to (e), inclusive, or when the commissioner obtains documents on an insurer and the insurer does not meet the criteria of subdivisions (a) to (e), inclusive.

(i) The commissioner shall require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(j) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

(k) (1) Insurance may be placed on a limited basis with insurers not on the list established pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that appear on the list of eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the unlisted insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the unlisted insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular unlisted insurer, and annually thereafter for as long as the broker continues to make placements with the unlisted insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars ($100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The unlisted insurer has for any reason been objected to by the commissioner pursuant to this section, removed from the list, or denied placement on the list.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States Code, or any other arrangement among two or more employers that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Unlisted insurers represent a disproportionate portion of the lower layers of the coverage.

(3) Nothing in this section is intended to alter any duties of a surplus line broker pursuant to subdivision (b) of Section 1765 or other laws of this state to safeguard the interests of the insured under the policy in recommending or placing insurance with a nonadmitted insurer.

(4) Placements authorized by this subdivision are intended to provide sophisticated insurance purchasers with a means to obtain necessary commercial insurance coverage from nonadmitted insurers not listed by the commissioner in situations where it is not commercially possible to fully obtain that coverage from either admitted or listed insurers. This subdivision shall not be deemed to permit surplus line brokers to place with nonadmitted insurers common commercial or personal line coverages for insureds that can be placed with insurers that are admitted or listed pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(*l*) As used in this section:

(1) "Certified" means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(2) "Domiciliary jurisdiction" means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(3) "Domiciliary state of the syndicate's trust" means the state in which the syndicate's trust fund is principally maintained and administered for the benefit of the syndicate's policyholders in the United States.

(4) "IID" means the International Insurers Department.

(5) "Insurer" means (unless the context indicates otherwise) "nonadmitted" insurers that are either "foreign" or "alien" insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator. The term "insurer" includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) "ISI" means Insurance Solvency International.

(7) "Licensee" means a surplus line broker as defined in Section 47.

(8) "NAIC" means the National Association of Insurance Commissioners or its successor organization.

(9) "NAIIO" means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) "State" means any state of the United States; the District of Columbia; a commonwealth, or a territory.

(11) "Verified" means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under penalty of perjury under California law, that the assertions made in the document are true.

(m) With respect to a nonadmitted insurer that is listed as an authorized surplus line insurer as of December 31, 1994, pursuant to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the California Code of Regulations, this section shall not be effective until the subsequent expiration of the listing of that insurer. Nothing in the bill that amended this section during the 1994 portion of the 1993–94 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

CHAPTER 256

An act to amend Section 2894 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 2894 of the Public Utilities Code is amended to read:

2894. (a) Notwithstanding subdivision (e) of Section 2891, the disclosure of any information by an interexchange telephone corporation, a local exchange telephone corporation, or a provider of commercial mobile radio service, in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena issued at the request of a law enforcement official or other federal, state, or local governmental agency for law enforcement purposes, is a complete defense against any civil action brought under this chapter or any other law, including, but not limited to,

Chapter 1.5 (commencing with Section 630) of Part 1 of Title 15 of the Penal Code, for the wrongful disclosure of that information.

(b) As used in this section the following terms have the following meanings:

(1) "Interexchange telephone corporation" means a telephone corporation that is a long-distance carrier.

(2) "Local exchange telephone corporation" means a telephone corporation that provides local exchange services.

(3) "Commercial mobile radio service " has the same meaning as the term "commercial mobile service" as defined in Section 332(d)(1) of Title 47 of the United States Code.

CHAPTER 257

An act to amend Section 8550 of the Business and Professions Code, relating to structural pest control.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 8550 of the Business and Professions Code is amended to read:

8550. (a) It is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter.

(b) Notwithstanding subdivision (a), an unlicensed individual may solicit pest control work on behalf of a structural pest control company only if the company is registered pursuant to this chapter, and the unlicensed individual does not perform or offer to perform any act for which an operator, field representative, or applicator license is required pursuant to this chapter. As used in this subdivision, to "solicit pest control work" means to introduce consumers to a registered company and the services it provides, to distribute advertising literature, and to set appointments on behalf of a licensed operator or field representative.

(c) It is unlawful for an unlicensed individual, soliciting pest control work on behalf of a registered structural pest control company pursuant to subdivision (b), to perform or offer to perform any act for which an operator, field representative, or applicator license is required, including, but not limited to, performing or offering pest control evaluations or inspections, pest identification, making any claims of pest control safety or pest control efficacy, or to offer price quotes other than what is provided and printed on the company advertising or literature, or both.

(d) It is also unlawful for any unlicensed individual to offer any opinion, or to make any recommendations, concerning the need for structural pest control work in general, or in connection with a particular structure.

(e) It is unlawful for any firm, sole proprietorship, partnership, corporation, association, or other organization or combination thereof to engage or offer to engage in the practice of structural pest control, unless registered in accordance with Article 6 (commencing with Section 8610).

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.

CHAPTER 258

An act to amend Section 20133 of the Public Contract Code, relating to public works contracts.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 20133 of the Public Contract Code is amended to read:

20133. (a) This section provides an alternative and optional procedure on bidding on building construction projects applicable only in the Counties of Alameda, Sacramento, Santa Clara, Solano, and Tulare, upon the approval of the appropriate board of supervisors.

(b) (1) If a board of supervisors elects to proceed under this section, it shall, before entering into any contract requiring advertising for bids for a project, cause to be prepared estimates, and prepare documents, for the solicitation of bids on a design and build basis.

(2) For the purposes of this section, "design and build" means a method of procuring design and construction from a single source. The selection of the single source occurs before the development of complete plans and specifications.

(c) The request for submittals shall include all of the following:

(1) A clear precise description of the services to be provided and work to be performed.

(2) A description of the format that submittals shall follow and the elements they shall contain, including the qualifications and relevant experience of the design professional and the contractor, and the criteria that shall be used in evaluating the submittal, including the bid price.

(3) The date on which the submittals are due, and the timetable that will be used in reviewing and evaluating the submittals.

(d) In addition to the information required in paragraph (2) of subdivision (c), bidders shall submit their proposals with the construction bid price and all cost information in a separate sealed envelope.

(e) All submittals received prior to the closing time stated in the request for submittal shall be reviewed to determine those that meet the format requirements and the standards specified in the request for submittal.

(f) The contract shall be awarded to the lowest responsible bidder meeting the standards of the request for submittal.

(g) For the purposes of this section, selections of design professionals shall meet the standards of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(h) Each county utilizing the procedures set forth in this section shall file, on or before September 1, 1998, and again on or before September 1, 2000, with the Committees on Local Government of the Senate and the Assembly, a report containing the following information:

(1) A description of each project procured through the design and build process authorized by this section, including but not limited to, all of the following:

(A) The type of facility.

(B) The gross square footage of the facility.

(C) The company or contractor who was awarded the project.

(D) The estimated and actual length of time to complete the project.

(E) The estimated and actual project cost.

(F) A description of the relative merits of projects authorized pursuant to this section and similar projects procured pursuant to existing requirements of this code.

(G) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of projects pursuant to this section, including the resolution of the project.

(2) Other pertinent information that each county believes is instructive in evaluating whether the method of procurement should be continued or expanded, or both.

(i) This section shall be applicable only to any project for which the costs specified in any contract awarded pursuant to this section do not exceed fifty million dollars ($50,000,000).

(j) Notwithstanding subdivision (i), the County of Alameda may award a contract in excess of fifty million dollars ($50,000,000) for the

design and construction of the Alameda County Juvenile Justice Complex.

(k) Contracts awarded pursuant to this section shall be valid until the project is completed, within the period specified in the contract entered into by the county prior to January 1, 2001.

(*l*) This section shall be applicable only to a project that is under the supervision of a licensed general building contractor within the meaning of Section 7057 of the Business and Professions Code.

(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 on or before January 1, 2001, deletes or extends that date.

CHAPTER 259

An act to add and repeal Section 20480 of the Government Code, relating to county peace officers.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 20480 is added to the Government Code, to read:

20480. (a) Notwithstanding Section 20479, for those county peace officers described in subdivision (b), the combined current and prior service pensions may be calculated according to the formula provided in Section 21362; survivor benefits may be provided pursuant to Sections 21624, 21626, and 21628; final compensation may be calculated according to Section 20042; and preretirement death benefits may be provided pursuant to Section 21573 or any other statute that provides a higher level of benefits.

(b) This section shall apply only to sworn personnel in the sheriff's office and the district attorney's office including the following classifications:

(1) Correctional Sergeant.
(2) Deputy Sheriff-Corrections.
(3) Deputy Sheriff-Operations.
(4) Undersheriff.
(5) Sheriff's Investigative Sergeant.
(6) Sheriff's Sergeant.
(7) Correctional Lieutenant.
(8) Sheriff's Lieutenant.
(9) Sheriff's Captain.
(10) Sheriff's Chief Deputy.
(11) Sheriff.
(12) District Attorney Investigator I.

(13) District Attorney Investigator II.
(14) District Attorney Investigator III.
(15) Supervising District Attorney Investigator.

This section shall also apply to any classifications created in the future that shall be occupied by sworn law enforcement personnel in the sheriff's department or the district attorney's office.

(c) This section shall not apply to the employees of any contracting agency nor to any agency unless and until the contracting agency elects to be subject to the provisions of this section by amendment to its contract with the board, made as provided in Section 20474, or by express provision in its contract with the board.

(d) This section shall only be applicable to the County of Monterey.

(e) This section shall remain in effect until January 1, 2002, and as of that date is repealed.

CHAPTER 260

An act to add Section 12921.8 to the Insurance Code, relating to insurance.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 12921.8 is added to the Insurance Code, to read:

12921.8. (a) The commissioner shall have the authority to issue a cease and desist order against any person acting as, or holding himself, herself, or itself out as, an insurance agent or broker without being so licensed, and against any person holding out that person as transacting, or transacting, the business of insurance without having been issued a certificate of authority. The commissioner may issue a cease and desist order without holding a hearing prior to issuance of the order. The commissioner may impose a fine of up to five thousand dollars ($5,000) for each day the order is violated.

(b) A person to whom a cease and desist order is issued, may, within seven days after service of the order, request a hearing by filing a request for the hearing with the commissioner. Any hearing shall be conducted in accordance with 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 of the Government Code), and the commissioner shall have all the powers granted therein.

(c) A person who has a hearing pursuant to subdivision (b) shall be entitled to have the proceedings and the order of the commissioner reviewed by means of any remedy provided by 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 of the Government Code).

CHAPTER 261

An act to amend Sections 1163, 1164, 1190, and 1191 of the Harbors and Navigation Code, relating to bay pilots, and making an appropriation therefor.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 1163 of the Harbors and Navigation Code is amended to read:

1163. (a) (1) (A) Each retired pilot and inland pilot, who has completed 25 full years of service as a pilot or inland pilot, or both, shall receive, as a target monthly pension, an amount that is initially equal to 46 percent of an amount that is an average of the highest three of the last five years of audited annual average net income per pilot, prior to the pilot's or inland pilot's retirement, divided by 12, which initial target monthly pension amount shall be subject to periodic adjustment pursuant to Section 1167. Pilots or inland pilots with other than 25 full years of service as a pilot or inland pilot, or both, shall receive a monthly pension in an amount that is determined by multiplying the above calculated target monthly pension by a fraction, the numerator of which shall be the number of full years of service that the pilot or inland pilot has rendered and the denominator of which shall be 25 years, which initial monthly pension amount shall be subject to periodic adjustment pursuant to Section 1167.

(B) Each disabled pilot or inland pilot shall receive as an initial target monthly pension an amount that is based on 46 percent of the greater of the following, which amount shall be subject to periodic adjustment pursuant to Section 1167:

(i) An amount that is the average of the highest three of the last five years of audited annual average net income per pilot divided by 12 and multiplied by a fraction, the numerator of which shall be the number of full years of service that the pilot or inland pilot has rendered and the denominator of which shall be 25 years.

(ii) The audited annual average net income per pilot, for the last year prior to the pilot's or inland pilot's disability, divided by 12 and multiplied by a fraction, the numerator of which shall be the number of full years of service that the pilot or inland pilot has rendered and the denominator of which shall be 25 years.

(C) Each pilot who retired before January 1, 1985, shall receive as an initial target monthly pension an amount that is one hundred seventy-eight dollars ($178) multiplied by the number of full years of service he or she performed as a pilot licensed under this division, which amount shall be subject to periodic adjustment pursuant to Section 1167.

(D) Each pilot who retired on or after January 1, 1985, or each inland pilot who retired after January 1, 1993, shall receive as an initial target monthly pension an amount that is the greater of the following, which amount shall be subject to periodic adjustment pursuant to Section 1167:

(i) An amount that is calculated by multiplying one hundred seventy-eight dollars ($178) by the number of full years of service the pilot or inland pilot performed as a pilot or inland pilot licensed under this division.

(ii) An amount that is 46 percent of the average of the highest three of the last five years of audited annual average net income per pilot, prior to the pilot's or inland pilot's retirement, divided by 12 and multiplied by a fraction, the numerator of which is the pilot's or inland pilot's actual number of full years of service and the denominator of which is 25 years.

(2) A pilot or inland pilot who retires or becomes disabled shall not begin to receive a pension until the beginning of the benefit payment period next following the date on which the pilot or inland pilot retires or becomes disabled.

(3) A pilot or inland pilot shall not receive any benefits pursuant to the pension plan in any benefit payment period unless the pilot's or inland pilot's resignation as an active pilot or inland pilot specifying a proposed date of retirement was submitted, in writing, to the board, prior to November if the pilot's or inland pilot's retirement is to be effective the first day of the following January, prior to February if the pilot's or inland pilot's retirement is to be effective the first day of the following April, prior to May if the pilot's or inland pilot's retirement is to be effective the first day of the following July, or prior to August if the pilot's or inland pilot's retirement is to be effective the first day of the following October. The pilot's or inland pilot's resignation as an active pilot or inland pilot shall become effective on either January 1, April 1, July 1, or October 1, as specified in the written resignation.

(4) If a retired or disabled pilot or inland pilot who is receiving a pension dies without a surviving spouse, the pilot's or inland pilot's successor in interest shall receive the monthly pension for the

remainder of the benefit payment period within which the death occurs, after which time the monthly pension shall cease.

(b) (1) The surviving spouse of a deceased pilot who is eligible for a pension pursuant to paragraph (1) of subdivision (e) of Section 1164 and the surviving spouse of a deceased inland pilot who is eligible for a pension pursuant to paragraph (2) of subdivision (e) of Section 1164 shall each receive, as a monthly pension, three-fourths of the amount that the deceased pilot or inland pilot would have received as a monthly pension pursuant to this section had the pilot or inland pilot lived, calculated as if the deceased pilot or inland pilot had been disabled pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(2) If a retired or disabled pilot or inland pilot who was receiving a pension dies, the surviving spouse shall continue to receive the full amount of the monthly pension to which the deceased pilot or inland pilot was entitled for the balance of the benefit payment period within which the death occurs, after which the surviving spouse shall receive the amount specified in paragraph (1).

(3) If a surviving spouse receiving a pension dies, the surviving spouse's successor in interest shall receive the monthly pension for the remainder of the benefit payment period within which the death occurs, after which time the monthly pension shall cease.

(c) For the purpose of the computations described in paragraph (1) of subdivision (a), six months or more of service by a pilot or inland pilot shall be considered a full year.

(d) Except as provided otherwise in this section and paragraph (4) of subdivision (e) of Section 1164, monthly pension amounts payable pursuant to this section to retired pilots and inland pilots and to their surviving spouses are payable for the life of that retired pilot, inland pilot, or spouse.

(e) To determine an inland pilot's full years of service under this chapter, any periods of service that an inland pilot has performed as a pilot shall be added to any service time performed as an inland pilot after January 1, 1987.

(f) In calculating the benefits of a retired or disabled pilot who was issued an original pilot's license in 1985 and who was not thereafter issued an inland pilot's license, or in calculating the benefits of the widow of such a pilot who is deceased, the number of years of service used in the calculation shall be the greater of the following:

(1) The actual number of full years of service the pilot has rendered.

(2) Ten years.

SEC. 2. Section 1164 of the Harbors and Navigation Code is amended to read:

1164. (a) Except as provided in subdivision (b), a pilot shall be eligible for the pension provided in Section 1163 if the pilot meets all of the following requirements:

(1) Held a license as a pilot and served at least 10 years in that capacity or has attained 62 years of age, whichever occurs first.

(2) Retired after January 1, 1972.

(3) Is at least 60 years of age.

(b) A disabled pilot shall be eligible for the pension provided in Section 1163 if it has been determined by the board, based upon competent medical evidence, that the pilot is unable to perform the duties of a pilot. As used in this chapter, "disabled" means a disability of permanent or extended and uncertain duration, as determined by the board, on the basis of competent medical opinion.

(c) Except as provided in subdivision (d), an inland pilot shall be eligible for the pension provided in Section 1163 if the inland pilot meets all of the following requirements:

(1) Held a license as an inland pilot and served at least 10 years in that capacity after January 1, 1987, or has attained 62 years of age, whichever occurs first.

(2) Retired after January 1, 1987.

(3) Is at least 60 years of age.

(4) Since January 1, 1987, has held himself or herself out as providing pilotage assistance to the entire shipping industry consistent with the inland pilot's license.

(5) For services provided after January 1, 1994, performs a minimum of 75 assignments per calendar year unless excused from performance of that requirement due to medical needs satisfactory to the board.

(d) A disabled inland pilot who meets the requirements of paragraph (4) of subdivision (c) shall be eligible for the pension provided in Section 1163 if it has been determined by the board, based upon competent medical evidence, that the inland pilot is unable to perform the duties of an inland pilot.

(e) (1) A surviving spouse of a deceased pilot shall be eligible for the pension provided in subdivision (b) of Section 1163 if that deceased pilot died after January 1, 1972, and that deceased pilot had held a license as a pilot.

(2) A surviving spouse of a deceased inland pilot shall be eligible for the pension provided in subdivision (b) of Section 1163 if the deceased inland pilot died after January 1, 1987, had held a license as an inland pilot, and since January 1, 1987, had held himself or herself out as providing pilotage assistance to the entire shipping industry consistent with the inland pilot's license.

(3) In order for a surviving spouse to be eligible for any pension benefits pursuant to this chapter, the surviving spouse shall have been legally married to the deceased pilot or inland pilot for at least one year prior to the deceased pilot's or inland pilot's death.

(4) A surviving spouse of a deceased pilot or inland pilot shall neither be eligible for, nor receive, pension benefits pursuant to this chapter if the surviving spouse remarries. If a surviving spouse who is receiving a monthly pension under this chapter remarries, the

surviving spouse's successor in interest shall receive the amount of the monthly pension for the remainder of the benefit payment period as if the surviving spouse had died, in accordance with paragraph (3) of subdivision (b) of Section 1163.

SEC. 3. Section 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) Every vessel spoken inward or outward bound shall pay the following rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun:

(1) Eight dollars and eleven cents ($8.11) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of 73.01 mills per high gross registered ton as changed pursuant to law in effect on December 31, 1999. The mill rates established by this paragraph may be changed as follows:

(A) Once the number of pilots licensed by the board is reduced to 60 pilots, for any subsequent decrease in the number of pilots, the mill rate then in effect shall be decreased by an incremental amount that is proportionate to one-half of the last audited annual average net income per pilot for each pilot licensed by the board below 60 pilots.

Once the number of pilots licensed by the board falls below 60, for any subsequent increase in the number of pilots, the mill rate then in effect shall be increased by an incremental amount that is proportionate to one-half of the last audited annual average net income per pilot for each new pilot that results in an increase in the number of pilots then licensed by the board.

The incremental mill rate adjustment authorized by this subparagraph shall be calculated using the data reported to the board for the number of gross registered tons handled by pilots licensed under this division during the same 12-month period as the audited annual average net income per pilot. The incremental mill rate adjustment shall become effective at the beginning of the quarter (January 1, April 1, June 1, or October 1) as directed by the board.

(B) There shall be an incremental rate of additional mills per high gross registered ton as is necessary and authorized by the board to recover the pilots' costs of obtaining new pilot boats. The incremental mill rate charge authorized by this subparagraph shall be identified as a pilot boat surcharge on the pilots' invoices and separately accounted for in the accounting required by Section 1136. Net proceeds from the sale of existing pilot boats shall be used to reduce the debt on the new pilot boats.

(C) In addition to the rate change specified in subparagraph (A) and the incremental rate specified in subparagraph (B), the mill rate established by this subdivision may be adjusted at the direction of the board if, after a hearing conducted pursuant to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, the board determines that there has been a catastrophic cost increase to the pilots that would result

in at least a 2-percent increase in the overall annual cost of providing pilot services.

(2) A minimum charge for bar pilotage shall be six hundred sixty-two dollars ($662) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of such transit inward or outward.

(b) The rate specified in subdivision (a) shall apply only to a pilotage that passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Union Pacific Railroad Bridge to the north and Hunter's Point to the south. The rate for pilotage to or from the high seas to or from a point past the Union Pacific Railroad Bridge or Hunter's Point shall include a movement fee in addition to the basic bar pilotage rate as specified by the board pursuant to Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels. This subdivision does not apply to the rates charged by inland pilots for their services.

(d) The board shall determine the number of pilots to be licensed based on the 1986 manpower study adopted by the board.

(e) Consistent with the board's January 1999 adoption of rate recommendations, the rates imposed pursuant to paragraph (1) of subdivision (a) that are in effect on December 31, 1999, shall be increased by 4 percent on January 1, 2000; those in effect on December 31, 2000, shall be increased by 3 percent on January 1, 2001; and those in effect on December 31, 2001, shall be increased by 3 percent on January 1, 2002.

SEC. 4. Section 1191 of the Harbors and Navigation Code is amended to read:

1191. (a) The board, pursuant to Chapter 6 (commencing with Section 1200), shall recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots and inland pilots engaged in ship movements or special operations where rates for those movements or operations are not specified in Section 1190.

(b) Every vessel using pilots and inland pilots for ship movements or special operations that do not constitute bar pilotage shall pay the rate specified in the schedule of pilotage rates adopted by the Legislature.

(c) The minimum rates charged by pilots or inland pilots for ship movements and internal operations shall be the schedule of ship pilot fees recommended for adoption by the board in January 1999, and published by the San Francisco Bar Pilots.

(d) Consistent with the board's January 1999 adoption of rate recommendations, the rates imposed pursuant to this section that are in effect on December 31, 1999, shall be increased by 22 percent on

January 1, 2000; those in effect on December 31, 2000, shall be increased by 15 percent on January 1, 2001; and those in effect on December 31, 2001, shall be increased by 10 percent on January 1, 2002.

CHAPTER 262

An act to amend Section 2551 of, and to add Section 891.5 to, the Streets and Highways Code, relating to transportation.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 891.5 is added to the Streets and Highways Code, to read:

891.5. The Sacramento Area Council of Governments, pursuant to subdivision (d) of Section 2551, may purchase, operate, and maintain callboxes on class 1 bikeways.

SEC. 2. 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) (1) 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 within another multicounty service authority, 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.

(2) The Sacramento Area Council of Governments may also exercise, as a service authority, in any of those counties, the powers specified in Section 891.5 pertaining to callboxes on class 1 bikeways.

(e) As used in this chapter, "authority" and "service authority" mean a service authority for freeway emergencies created pursuant to this chapter.

CHAPTER 263

An act to amend Sections 9053, 9100, and 9250 of, to add Sections 104.5 and 1214 to, and to repeal Section 1218 of, the Probate Code, relating to decedent's estates.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 104.5 is added to the Probate Code, to read:

104.5. Transfer of community and quasi-community property to a revocable trust shall be presumed to be an agreement, pursuant to Sections 100 and 101, that those assets retain their character in the aggregate for purposes of any division provided by the trust. This section shall apply to all transfers prior to, on, or after January 1, 2000.

SEC. 2. Section 1214 is added to the Probate Code, to read:

1214. If a notice or other paper is required or permitted to be mailed, delivered, served, or otherwise given to a person who is represented by an attorney of record, the notice or other paper shall also be mailed to this attorney, unless otherwise specified in a request for special notice.

SEC. 3. Section 1218 of the Probate Code is repealed.

SEC. 4. Section 9053 of the Probate Code is amended to read:

9053. (a) If the personal representative believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, the personal representative is not liable to any person for giving the notice, whether or not required by this chapter.

(b) If the personal representative fails to give notice required by this chapter, the personal representative is not liable to any person for the failure, unless a creditor establishes all of the following:

(1) The failure was in bad faith.

(2) The creditor had no actual knowledge of the administration of the estate before expiration of the time for filing a claim, and payment would have been made on the creditor's claim in the course of administration if the claim had been properly filed.

(3) Within 16 months after letters were first issued to a general personal representative, the creditor did both of the following:

(A) Filed a petition requesting that the court in which the estate was administered make an order determining the liability of the personal representative under this subdivision.

(B) At least 30 days before the hearing on the petition, caused notice of the hearing and a copy of the petition to be served on the personal representative in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(c) Nothing in this section affects the liability of the estate, if any, for the claim of a creditor, and the personal representative is not liable for the claim to the extent it is paid out of the estate or could be paid out of the estate pursuant to Section 9103.

(d) A personal representative has a duty to make reasonably diligent efforts to identify reasonably ascertainable creditors of the decedent.

SEC. 5. Section 9100 of the Probate Code is amended to read:

9100. (a) A creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Sixty days after the date notice of administration is given to the creditor. Nothing in this paragraph extends the time provided in Section 366.2 of the Code of Civil Procedure.

(b) A reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a).

(c) Nothing in this section shall be interpreted to extend or toll any other statute of limitations or to revive a claim that is barred by any statute of limitations. The reference in this subdivision to a "statute of limitations" includes Section 366.2 of the Code of Civil Procedure.

SEC. 6. Section 9250 of the Probate Code is amended to read:

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in Part 2 (commencing with Section 1200) of Division 3, together with a copy of the allowance or rejection.

(c) The allowance or rejection shall contain the following information:

(1) The name of the creditor.

(2) The total amount of the claim.
(3) The date of issuance of letters.
(4) The date of the decedent's death.
(5) The estimated value of the decedent's estate.
(6) The amount allowed or rejected by the personal representative.
(7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act (Part 6 (commencing with Section 10400)).
(8) A statement that the creditor has three months in which to act on a rejected claim.
(d) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.
(e) This section does not apply to a demand the personal representative elects to treat as a claim under Section 9154.

CHAPTER 264

An act to amend Section 51350 of the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 51350 of the Health and Safety Code is amended to read:
51350. (a) The agency may, from time to time, issue its bonds in the principal amount which the agency determines necessary to provide sufficient funds for financing housing developments and other residential structures and for the payment of interest on bonds of the agency, establishment of reserves to secure the bonds, and other expenditures of the agency incident to, and necessary or convenient to, issuance of the bonds.
(b) (1) Sale of the bonds of the agency shall be coordinated by the Treasurer. To obtain a date for the sale of bonds, the agency shall inform the Treasurer of the amount of the proposed issue. Upon that notification, the Treasurer shall provide three 10-day periods, within the 90 days next following, when the bonds can be sold. The agency may choose any date during the suggested periods or any other date to which the agency and the Treasurer have mutually agreed. The Treasurer shall sell the bonds on the date chosen according to terms approved by the agency.

(2) The agency shall exercise its powers with due regard for the right of the holders of bonds of the agency at any time outstanding, and nothing in, or done pursuant to, this section shall in any way limit, restrict, or alter the obligation or powers of the agency or any member, officer, or representative of the agency or the Treasurer to carry out and perform in every detail each and every covenant, agreement, or contract at any time made or entered into on behalf of the agency with respect to its bonds or its benefits, or the security of the holders of the bonds.

(c) Except as provided in subdivisions (d), (e), (f), (g), and (h), the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall not exceed seven hundred fifty million dollars ($750,000,000), exclusive of the principal indebtedness of bonds issued to refund or renew previously issued bonds of the agency, to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(d) Effective January 1, 1980, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be increased by seven hundred fifty million dollars ($750,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(e) Effective January 1, 1983, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by three hundred fifty million dollars ($350,000,000) exclusive of (1) bonds previously authorized pursuant to subdivision (c) or (d), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(f) Effective January 1, 1984, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by five hundred million dollars ($500,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), (d), or (e), and (2) the principal

indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(g) On the effective date of the amendments to this section enacted by the Statutes of 1985, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by six hundred million dollars ($600,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), (d), (e), or (f), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(h) On the effective date of the amendments to this section enacted by the Statutes of 1985, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by six hundred million dollars ($600,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), (d), (e), (f), or (g), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(i) Effective September 4, 1990, the aggregate principal amount of bonds which may be outstanding at any one time pursuant to this part shall be additionally increased by nine hundred million dollars ($900,000,000), exclusive of the following: (1) bonds previously authorized pursuant to subdivision (c), (d), (e), (f), (g), or (h), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(j) On the effective date of the amendments to this section which add this subdivision, the aggregate principal amount of bonds which

may be outstanding at any one time pursuant to this part shall be additionally increased by nine hundred million dollars ($900,000,000), exclusive of the following: (1) bonds previously authorized pursuant to subdivision (c), (d), (e), (f), (g), (h), or (i), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(k) Effective January 1, 1998, the aggregate principal amount of bonds which may be outstanding at any one time pursuant to this part shall be additionally increased by one billion four hundred million dollars ($1,400,000,000), exclusive of: (1) bonds previously authorized pursuant to subdivision (c), (d), (e), (f), (g), (h), (i), or (j), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(*l*) Effective January 1, 2000, the aggregate principal amount of bonds that may be outstanding at any one time pursuant to this part shall be additionally increased by two billion two hundred million dollars ($2,200,000,000), exclusive of: (1) bonds previously authorized pursuant to subdivisions (c) to (k), inclusive, and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

CHAPTER 265

An act to amend Section 399.5 of the Penal Code, relating to dog bites.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. This act shall be known and may be cited as "Cody's Law."

SEC. 2. Section 399.5 of the Penal Code is amended to read:

399.5. (a) Any person owning or having custody or control of a dog trained to fight, attack, or kill is guilty of a felony or a misdemeanor, punishable by imprisonment in the state prison for two, three, or four years, or in a county jail not to exceed one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment, if, as a result of that person's failure to exercise ordinary care, the dog bites a human being, on two separate occasions or on one occasion causing substantial physical injury. No person shall be criminally liable under this section, however, unless he or she knew or reasonably should have known of the vicious or dangerous nature of the dog, or if the victim failed to take all the precautions that a reasonable person would ordinarily take in the same situation.

(b) Following the conviction of an individual for a violation of this section, the court shall hold a hearing to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bite or bites have changed so as to remove the danger to other persons presented by the animal. 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) Nothing in this section shall authorize the bringing of an action pursuant to subdivision (a) based on a bite or bites inflicted upon a trespasser, upon a person who has provoked the dog or contributed to his or her own injuries, 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. As used in this subdivision, "provocation" includes, but is not limited to, situations where a dog held on a leash by its owner or custodian reacts in a protective manner to a person or persons who approach the owner or custodian in a threatening manner.

(d) Nothing in this section shall be construed to affect the liability of the owner of a dog under Section 399 or any other provision of law.

(e) This section shall not apply to a veterinarian or an on-duty animal control officer while in the performance of his or her duties, or to a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, if he or she is assigned to a canine unit.

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.

CHAPTER 266

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. This act may be cited as the Second Validating Act of 1999.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.
County free library systems.
County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.

Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.

Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the detachment, withdrawal, or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the

governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the State and Federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, detachment or exclusion therefrom, or other change of boundaries thereof, or for the

consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 267

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. This act may be cited as the Third Validating Act of 1999.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.

County maintenance districts.

County sanitation districts.

County service areas.

County transportation commissions.

County water agencies.

County water authorities.

County water districts.

County waterworks districts.

Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.

Distribution districts of any public body.

Drainage districts.

Fire protection districts.

Flood control and water conservation districts.

Flood control districts.

Garbage and refuse disposal districts.

Garbage disposal districts.

Geologic hazard abatement districts.

Harbor districts.

Harbor improvement districts.

Harbor, recreation, and conservation districts.

Health care authorities.

Highway districts.

Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.

Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the detachment, withdrawal, or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, detachment or exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 268

An act to add Section 834c to the Penal Code, relating to law enforcement.

[Approved by Governor August 30, 1999. Filed with
Secretary of State August 30, 1999.]

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

SECTION 1. Section 834c is added to the Penal Code, to read:

834c. (a) (1) In accordance with federal law and the provisions of this section, every peace officer, upon arrest and booking or detention for more than two hours of a known or suspected foreign national, shall advise the foreign national that he or she has a right to communicate with an official from the consulate of his or her country, except as provided in subdivision (d). If the foreign national chooses to exercise that right, the peace officer shall notify the pertinent official in his or her agency or department of the arrest or detention and that the foreign national wants his or her consulate notified.

(2) The law enforcement official who receives the notification request pursuant to paragraph (1) shall be guided by his or her agency's procedures in conjunction with the Department of State Guidelines Regarding Foreign Nationals Arrested or Detained in the United States, and make the appropriate notifications to the consular officers at the consulate of the arrestee.

(3) The law enforcement official in charge of the custodial facility where an arrestee subject to this subdivision is located shall ensure that the arrestee is allowed to communicate with, correspond with, and be visited by, a consular officer of his or her country.

(b) The 1963 Vienna Convention on Consular Relations Treaty was signed by 140 nations, including the United States, which ratified the agreement in 1969. This treaty guarantees that individuals arrested or detained in a foreign country must be told by police "without delay" that they have a right to speak to an official from their country's consulate and if an individual chooses to exercise that right a law enforcement official is required to notify the consulate.

(c) California law enforcement agencies shall ensure that policy or procedure and training manuals incorporate language based upon provisions of the treaty that set forth requirements for handling the arrest and booking or detention for more than two hours of a foreign national pursuant to this section prior to December 31, 2000.

(d) Countries requiring mandatory notification under Article 36 of the Vienna Convention shall be notified as set forth in this section without regard to an arrested or detained foreign national's request to the contrary. Those countries, as identified by the United States Department of State on July 1, 1999, are as follows:

(1) Antigua and Barbuda.
(2) Armenia.
(3) Azerbaijan.
(4) The Bahamas.
(5) Barbados.
(6) Belarus.

(7) Belize.
(8) Brunei.
(9) Bulgaria.
(10) China.
(11) Costa Rica.
(12) Cyprus.
(13) Czech Republic.
(14) Dominica.
(15) Fiji.
(16) The Gambia.
(17) Georgia.
(18) Ghana.
(19) Grenada.
(20) Guyana.
(21) Hong Kong.
(22) Hungary.
(23) Jamaica.
(24) Kazakhstan.
(25) Kiribati.
(26) Kuwait.
(27) Kyrgyzstan.
(28) Malaysia.
(29) Malta.
(30) Mauritius.
(31) Moldova.
(32) Mongolia.
(33) Nigeria.
(34) Philippines.
(35) Poland (nonpermanent residents only).
(36) Romania.
(37) Russia.
(38) Saint Kitts and Nevis.
(39) Saint Lucia.
(40) Saint Vincent and the Grenadines.
(41) Seychelles.
(42) Sierra Leone.
(43) Singapore.
(44) Slovakia.
(45) Tajikistan.
(46) Tanzania.
(47) Tonga.
(48) Trinidad and Tobago.
(49) Turkmenistan.
(50) Tuvalu.
(51) Ukraine.
(52) United Kingdom.
(53) U.S.S.R.
(54) Uzbekistan.

(55) Zambia.
(56) Zimbabwe.

However, any countries requiring notification that the above list does not identify because the notification requirement became effective after July 1, 1999, shall also be required to be notified.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

CHAPTER 269

An act to add Section 54906 to the Government Code, and to add Section 1162.6 to the Streets and Highways Code, relating to highways.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 30, 1999.]

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

SECTION 1. Section 54906 is added to the Government Code, to read:

54906. This chapter does not apply to any zones within a permanent road division created pursuant to Section 1162.6 of the Streets and Highways Code, where the zones are formed for a specific permanent road project.

SEC. 2. Section 1162.6 is added to the Streets and Highways Code, to read:

1162.6. (a) Notwithstanding any other provision of this chapter, the board of supervisors may form a permanent road division without reference to a specific permanent road project. The division may include the entire unincorporated area of the county. The board may create zones within the division for specific permanent road projects, with differing special taxes or parcel charges. Parcel charges shall be deemed to be assessments within the meaning of Article XIII D of the California Constitution.

(b) Formation of the division shall be initiated by resolution of the board of supervisors that sets a time and date for a hearing on the matter. Notice of the hearing shall be given pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the county, or, if there is no newspaper of general circulation published in the county, in a newspaper of general circulation that is circulated within the territory proposed to be included within the division. Publication shall be complete at least seven days prior to the hearing.

(c) At the hearing, the board of supervisors shall hear all objections to the establishment of the division and shall determine whether to form the division.

(d) Proceedings to form a division or zones may be consolidated with an assessment ballot proceeding pursuant to Section 53753 of the Government Code.

CHAPTER 270

An act to amend Section 4850 of the Labor Code, relating to workers' compensation.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 31, 1999.]

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

SECTION 1. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any city police officer, city, county, or district firefighter, sheriff or any officer or employee of a sheriff's office, any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, any peace officer under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class, or lifeguard employed year round on a regular, full-time basis by a county of the first class, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city or county, to leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until such earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) This section shall apply only to city police officers, sheriffs or any officer or employee of a sheriff's office, and any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of a police department whose principal duties are those

of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service, and excludes employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It shall also apply to city, county, or district firefighters who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of the city fire department, county fire department, and of any fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service. It shall also apply to deputy sheriffs, and to peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class, who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). It shall also apply to lifeguards employed year round on a regular, full-time basis by a county of the first class who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

(c) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(d) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

(e) This section shall become operative on January 1, 1990.

SEC. 2. The Legislature finds and declares with respect to Section 1 of this act that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because the work of peace officers under Section 830.31 of the Penal Code who are employed on a regular, full-time basis by a county of the first class require the disability benefits of Section 4850 of the Labor Code.

CHAPTER 271

An act to add Section 31646.5 to the Government Code, relating to county employees retirement.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 31, 1999.]

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

SECTION 1. Section 31646.5 is added to the Government Code, to read:

31646.5. (a) A member who wishes to apply for a nonservice-connected disability retirement allowance may, to the extent necessary to qualify for that allowance, receive service credit for a period of continuous, uncompensated leave immediately preceding the filing of the application upon satisfaction of all of the following:

(1) The member has exhausted all compensated leave, including any catastrophic leave to which the member may be eligible.

(2) The leave of absence was due to the member's medical condition that has been determined by the board to be a terminal illness.

(3) Payment by the member of the contributions the member would have paid during the leave of absence, together with interest those contributions would have earned had they been on deposit if the member were not absent. The contributions may be paid in a lump sum, or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed; provided, however, that payment shall be completed prior to the effective date of the member's retirement, or in accordance with Section 31485.7 or 31485.8 if either section has been adopted by the board of supervisors.

(b) Credit may not be received pursuant to this section for a period in excess of 12 consecutive months.

(c) This section shall not apply in any county unless and until it is adopted by a majority vote of the board of supervisors.

CHAPTER 272

An act to amend Sections 19849.9, 19871.2, 22754, and 22955 of the Government Code, relating to state employee benefits, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 31, 1999.]

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

SECTION 1. Section 19849.9 of the Government Code is amended to read:

19849.9. (a) Any appointing power may present to an employee who has completed 25 or more years of state service a certificate, plaque, or other suitable memento and the cost of the same shall be a proper charge against the support appropriation of the department or office in which the employee serves. The cost of any certificate, plaque, or memento shall not exceed the sum of ninety dollars ($90). A presentation may likewise be made to a retired employee who on the date of his or her retirement had completed 25 or more years of state service.

(b) Beginning January 1, 2005, and every five years thereafter, the director may adjust the limit specified in subdivision (a) to reflect the average rate of inflation since the dollar amount was last adjusted.

SEC. 2. Section 19871.2 of the Government Code is amended to read:

19871.2. When an excluded employee is temporarily disabled for more than 22 consecutive working days by an injury or type of injury designated by the director as qualifying an employee for the benefits of this section, he or she shall receive an enhanced industrial disability leave benefit. The enhanced benefit shall be equivalent to the injured employee's net take home salary on the date of occurrence of injury. Eligibility and benefits may not exceed 52 weeks within a two-year period after the date of occurrence of the injury. For the purposes of this section, "net salary" means the amount of salary received after federal income tax, state income tax, and the employee's retirement contribution has been deducted from the employee's gross salary.

The final decision as to whether an employee is eligible for, or continues to be eligible for, enhanced benefits shall rest with the appointing authority or his or her designee. The appointing authority may periodically review the employee's condition by any means necessary to determine an employee's continued eligibility for enhanced benefits.

SEC. 3. Section 22754 of the Government Code is amended to read:

22754. As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) "Board" means the Board of Administration of the Public Employees' Retirement System.

(b) "Employee" means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or

otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement System employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(4) Notwithstanding paragraph (1), "eligible employee" of the State of California, as it applies to state employees in State Bargaining Unit 16, means (A) a permanent employee appointed half time or more; (B) an employee who is a limited term or temporary authorization appointee who continues coverage based on prior continuous permanent status; (C) an employee who is in a half time or more limited-term appointment shall qualify after working six consecutive months; and (D) an employee appointed half time or more to a temporary appointment in lieu of a permanent appointment; and (E) a permanent intermittent employee who works a minimum of 480 hours in a six-month control period. All other limited-term, nonstatus employees as defined by the Department of Personnel Administration and temporary authorization employees are not eligible.

(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health

services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) "Health benefits plan" means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) "Annuitant" means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21545, or 21546 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) (1) "Family member" means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees, as defined in Section 19815, that are in State Bargaining Unit 5. "Family member" only means an employee's legal spouse and any unmarried child, adopted child, stepchild, recognized natural child, or legal ward living with the employee in a regular parent-child relationship.

(g) "Contracting agency" means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds.

(h) "Employer" means the state, any contracting agency employing an employee, and any agency that has elected to become subject to this part pursuant to Section 22856.

(i) "Special district" means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 3.5. Section 22754 of the Government Code is amended to read:

22754. As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) "Board" means the Board of Administration of the Public Employees' Retirement System.

(b) "Employee" means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement System employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(4) Notwithstanding paragraph (1), "eligible employee" of the State of California, as it applies to state employees in State Bargaining Unit 16, means (A) a permanent employee appointed half time or more; (B) an employee who is a limited term or temporary authorization appointee who continues coverage based on prior continuous permanent status; (C) an employee who is in a half time or more limited-term appointment shall qualify after working six

consecutive months; and (D) an employee appointed half time or more to a temporary appointment in lieu of a permanent appointment; and (E) a permanent intermittent employee who works a minimum of 480 hours in a six-month control period. All other limited-term, nonstatus employees as defined by the Department of Personnel Administration and temporary authorization employees are not eligible.

(5) Any teaching associate, lecturer, coach, or interpreter employed by the California State University who is appointed to work in an academic year classification for at least six weighted teaching units for one semester, or for at least six weighted teaching units for two or more consecutive quarter terms. This subdivision shall not apply to a state member employed by the California State University, unless provided for in a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, or authorized by the Trustees of the California State University for employees excluded from collective bargaining.

(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) "Health benefits plan" means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) "Annuitant" means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21545, or 21546 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) (1) "Family member" means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees, as defined in Section 19815, that are in State Bargaining Unit 5. "Family member" only means an employee's legal spouse and any unmarried child, adopted child, stepchild, recognized natural child, or legal ward living with the employee in a regular parent-child relationship.

(g) "Contracting agency" means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds.

(h) "Employer" means the state, any contracting agency employing an employee, and any agency that has elected to become subject to this part pursuant to Section 22856.

(i) "Special district" means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 4. Section 22955 of the Government Code is amended to read:

22955. (a) Notwithstanding Sections 22953 and 22954, an employee in State Bargaining Unit 6, 8, or 16 who becomes a state member of the Public Employees' Retirement System after January 1, 1999, and who is included in the definition of state employee in subdivision (c) of Section 3513 shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Sections 22953 and 22954, unless the employee is credited with 10 years or more of state service, as defined by this section, at the time of retirement.

(b) The percentage of employer's contribution amount payable for postretirement dental care benefits for an employee subject to

this section shall be based on the funding provision of the plan and the member's completed years of state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20	100

(c) This section shall only apply to state employees who retire for service.

(d) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(e) For purposes of this section, "state service" means service rendered as an employee or an appointed or elected officer of the state for compensation. In those cases where the state assumes or has assumed from a public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elected officers of that local public agency shall not be credited, at retirement, as state service for the purposes of this section, unless the former employer has paid or agreed to pay the state agency the amount actuarially determined to equal the cost for any employee dental benefits that were vested at the time that the function and the related personnel were assumed by the state. For noncontracting local public agencies the state department shall certify the completed years of local agency service to be credited to the employee to the Public Employees' Retirement System at the time of separation for retirement.

(f) Whenever the state contracts to assume a local public agency function, completed years of service rendered by the personnel for compensation as employees or appointed or elected officers of the local public agency shall be credited as state service only upon a finding by the Department of Finance that the contract contains a benefit factor sufficient to reimburse the state for the amount

necessary to compensate the state fully for postretirement dental benefit costs for those personnel.

(g) This section shall not apply to employees of the California State University or the Legislature.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 22754 of the Government Code proposed by both this bill and AB 211. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, but this bill becomes operative first, (2) each bill amends Section 22754 of the Government Code, and (3) this bill is enacted after AB 211, in which case Section 22754 of the Government Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 211, at which time Section 3.5 of this bill shall become operative.

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 for collective bargaining agreements to be implemented during the 1998–99 fiscal year, the act must take effect immediately.

CHAPTER 273

An act to amend Section 44024.5 of the Health and Safety Code, relating to air quality.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 31, 1999.]

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

SECTION 1. Section 44024.5 of the Health and Safety Code is amended to read:

44024.5. (a) The department shall compile and maintain statistical and emissions profiles of motor vehicles that are subject to the motor vehicle inspection program. The department may use data from any source, including remote sensing data and other motor vehicle inspection program data, to develop and confirm the validity of the profiles.

(b) The department, in cooperation with the state board, shall perform periodic analyses of the statistical and emissions profiles created pursuant to subdivision (a). The department and the state board, in consultation with the Inspection and Maintenance Review Committee, may determine that, in addition to the vehicles excepted pursuant to Section 44011, certain other motor vehicles may be excepted from the biennial certification requirements of this chapter without significantly compromising the emission reduction objectives set forth in the State Implementation Plan (SIP).

(c) The department may conduct a pilot program to except from the biennial certification requirement those vehicles that may be jointly determined by the department and the state board, after consultation with the Inspection and Maintenance Review Committee, to warrant exception. The department shall provide written notification to the Legislature specifying the number of vehicles to be exempted as well as the geographic location and duration of the pilot program not less than 30 days prior to the implementation of the pilot program. The department shall submit the results of the pilot program to the state board and the Inspection and Maintenance Review Committee for review. Subject to the approval of the United States Environmental Protection Agency as an amendment to the SIP, the department may establish the exception program as a permanent program.

(d) As part of the pilot program, on or before June 30, 2000, the department shall evaluate standards for the operation of remote sensing equipment, evaluate the need to certify individuals who operate that equipment, and evaluate the need to license entities that provide remote sensing services under the direction of the department.

(e) For vehicles four model years old or less, the department shall use test data generated pursuant to Section 44014.7 to develop statistical and emissions profiles. The department may use data from any source, including remote sensing data, warranty repair and recall data, and other motor vehicle inspection program data, to develop and confirm the validity of the data. If the department and state board jointly determine that the emissions from a class of motor vehicles would potentially compromise the emission reduction objectives set forth in the SIP, the state board shall consider appropriate corrective action, including, but not limited to, recall pursuant to Section 43105.

CHAPTER 274

An act to amend Section 5108 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 30, 1999. Filed with Secretary of State August 31, 1999.]

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

SECTION 1. Section 5108 of the Revenue and Taxation Code is amended to read:

5108. (a) For the 1994–95 fiscal year and each fiscal year thereafter, the governing body of a local agency shall have the authority, by a majority vote of that governing body, to rebate some

or all of the property tax revenue that the local agency would receive from economic revitalization manufacturing property for a period of five fiscal years from the date the property was placed in service. For purposes of this section, a redevelopment agency shall obtain the approval, by a majority vote of the governing bodies of the city and the county in which the redevelopment agency is located, prior to having the authority to rebate some or all of that property tax revenue.

(b) For purposes of this section:

(1) "Economic revitalization manufacturing property" means tangible personal property that meets all of the following requirements:

(A) The property is directly involved in the manufacturing process in this state, and not in a preliminary or subsequent activity, or one incidental to manufacturing.

(B) Use of the property will lead to the creation of at least 10 new full-time manufacturing jobs or positions at salary levels of at least ten dollars ($10) per hour (twenty thousand dollars ($20,000) per year), and those jobs or positions will continue in existence for a continuous five-year period.

(C) A majority of the governing body of the local agency makes a finding, in its sole discretion, that the property is used in conjunction with the establishment or expansion of a manufacturing project or facility within the local agency's jurisdiction, and that the property meets the requirements of subparagraphs (A) and (B). In this connection, a majority of the governing body is hereby authorized, but not required, to make the finding specified herein, and thereby authorize the rebate provided pursuant to this section.

(D) The property is "qualified property" for purposes of the manufacturing investment credit under subdivision (d) of Sections 17053.49 and 23649.

(2) "Manufacturing process" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

(3) "Ten or more new employees" means a net increase by 10 or more of the total number of employees, as defined in Section 621 of the Unemployment Insurance Code, employed by the taxpayer in this state. The increase in the total number of employees employed in this state shall be determined by subtracting the total number of employees the taxpayer employed in the previous fiscal year from the total number of employees the taxpayer employed in the current fiscal year. The total number of employees employed in this state shall equal the sum of both of the following:

(A) The total number of hours worked by employees in this state for the taxpayer who are paid an hourly wage divided by the applicable hours per workyear.

(B) The total number of months worked by salaried employees in this state for the taxpayer divided by the applicable months per workyear.

(4) "Applicable workyear" means with respect to a worker paid an hourly wage, 2,000 paid hours and, with respect to a salaried employee, a total of 12 paid months. The applicable workyear, in the case of a manufacturing project or facility that becomes operational during the year, shall be the amounts in the foregoing sentence multiplied by a fraction, the numerator of which is the number of months of the year that the project or facility was operational and the denominator of which is 12.

An employee shall be deemed to be employed at a manufacturing project or facility if he or she utilizes the project or facility as his or her principal place of business.

(5) "Local agency" means a city, county, city and county, redevelopment agency, or special district, excluding any school district.

(c) If at any time within five years after granting a rebate pursuant to this section, the governing body finds that the recipient taxpayer has not complied with the conditions of paragraph (1) of subdivision (b), the governing body may recapture from that taxpayer all or any portion of the amount rebated.

(d) This section shall apply only to property that is placed in service on or after January 1, 1994.

(e) (1) On or before January 1, 2002, the Legislative Analyst shall prepare a report for the Legislature, which shall include, but not be limited to, the following information with respect to this section:

(A) A list of local agencies that have utilized the tax rebate provisions.

(B) The dollars expended by each agency utilizing the tax rebate provisions.

(C) The number of jobs created by each of the local agencies utilizing the tax rebate provisions.

(D) A reasoned estimate of the number of jobs created that, but for these provisions, would have been located outside the state.

(E) A reasoned estimate of the number of jobs that, but for these provisions, would have been located in another jurisdiction within the state.

(2) By granting this tax rebate, the granting agency agrees to cooperate fully with the Legislative Analyst.

(3) Beginning in 2000, each participating agency shall provide the Legislative Analyst annually with a complete set of data for the program, including all of the information required in paragraph (1).

(4) The final report by the Legislative Analyst, provided pursuant to paragraph (1), shall include an analysis of the cost per job of jobs created pursuant to this section, a comparison of this program to other economic development tools, and a recommendation as to

whether this program should be continued in its present form, restructured, or eliminated.

(f) A local agency may enter into an agreement with a taxpayer to implement this section and the agreement shall be valid notwithstanding the subsequent repeal of this section.

(g) Nothing in this section shall be deemed to eliminate or reduce the obligation of a redevelopment agency to comply with Section 33334.2, 33334.6, 33607.5, or 33607.7 of the Health and Safety Code.

(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.

CHAPTER 275

An act to add Sections 305.5 and 7810 to the Family Code, and to add Section 360.6 to the Welfare and Institutions Code, relating to child custody, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 7810 is added to the Family Code, to read:

7810. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

SEC. 2. Section 305.5 is added to the Welfare and Institutions Code, to read:

305.5. (a) Where an Indian child, who resides or is domiciled within a reservation of an Indian tribe that has reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, has been removed by a state or local authority from the custody of his or her parents or Indian custodian, the state or local authority shall provide notice of the removal to the tribe no later than the next working day following the removal and shall provide all relevant documentation to the tribe regarding the removal and the child's identity. If the tribe determines that the child is an Indian child, the state or local authority shall transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe of that determination.

(b) As used in this section, the terms "Indian child" and "Indian child custody proceedings" shall be defined as provided in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

SEC. 3. Section 360.6 is added to the Welfare and Institutions Code, to read:

360.6. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

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 immediately protect and preserve the rights of Indian children, their parents or custodians, and their tribes in custody proceedings, it is necessary that this act take effect immediately.

CHAPTER 276

An act to amend Sections 60045 and 60200 of, and to add Sections 60048 and 60200.2 to, the Education Code, relating to instructional materials.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 60045 of the Education Code is amended to read:

60045. (a) All instructional materials adopted by any governing board for use in the schools shall be, to the satisfaction of the governing board, accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels.

(b) With the exception of literature and tradebooks, all instructional materials adopted by any governing board for use in schools shall use proper grammar and spelling. The state board may adopt regulations that provide for other allowable exceptions to this subdivision for educational purposes, as determined by the state board.

SEC. 2. Section 60048 is added to the Education Code, to read:

60048. (a) Basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that provide any exposure to a commercial brand name, product, or corporate or company logo in a manner that is inconsistent with guidelines or frameworks adopted by the State Board of Education may not be adopted by a school district governing board.

(b) The governing board of a school district may not adopt basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding pursuant to the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.

(c) Nothing in this section shall be construed to prohibit the publisher of instructional materials to include whatever corporate name or logo on the instructional materials that is necessary to

provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(d) The state board may adopt regulations that provide for other allowable exceptions to this section, as determined by the state board.

(e) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.

SEC. 3. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling and reading.

(2) Mathematics.

(3) Science.

(4) Social science.

(5) Bilingual or bicultural subjects.

(6) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) not less than two times every six years and in any of the subject areas pursuant to paragraph (6) of subdivision (a) not less than two times every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the six- and eight-year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the

following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) Do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo. Materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the board determines that the use of the commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:

(A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the State Board of Education.

(B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

(6) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet

the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district governing board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than six years from the date of adoption for instructional materials pertaining to subject areas designated in paragraphs (1) to (5), inclusive, of subdivision (a), and not more than eight years from the date of adoption for instructional materials pertaining to subject areas designated in paragraph (6) of subdivision (a), or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil

learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(*l*) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(m) The state board shall give publishers the opportunity to modify instructional materials, in a manner provided for in regulations adopted by the state board, if the state board finds that the instructional materials do not comply with paragraph (5) of subdivision (c).

(n) Nothing in this section shall be construed to prohibit the publisher of instructional materials from including whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(o) The state board may adopt regulations that provide for other exceptions to this section, as determined by the board.

(p) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.

SEC. 4. Section 60200.2 is added to the Education Code, to read:

(a) In addition to the findings authorized under subparagraphs (A) and (B) of paragraph (5) of subdivision (c) of Section 60200, if the state board finds that the use of a commercial brand name, product, or corporate or company logo in an instructional material is authorized under a contract entered into under paragraph (3) of subdivision (a) of Section 35182.5 as added by Assembly Bill 117 of the 1999–2000 Regular Session, the state board may allow the use of that instructional material.

(b) This section shall become operative only if Section 35182.5 as proposed by Assembly Bill 117 of the 1999–2000 Regular Session is enacted and takes effect.

SEC. 5. Sections 1 to 3, inclusive, of this act shall only apply to notices of "Invitation to Submit Basic Instructional Materials for Adoption in California" issued after January 1, 2000, and for other instructional materials submitted after January 1, 2000, to the State Board of Education for a determination of compliance with the requirements of Article 3 (commencing with Section 60040) of Chapter 1 of Part 33 of the Education Code.

———

CHAPTER 277

An act to amend Section 39004 of, to amend, repeal, and add Section 21450 of, and to add and repeal Sections 21456.2 and 21456.3 of, the Vehicle Code, relating to transportation.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 21450 of the Vehicle Code is amended to read:

21450. (a) Whenever traffic is controlled by official traffic control signals showing different colored lights, color-lighted arrows, or color-lighted bicycle symbols, successively, one at a time, or in combination, only the colors green, yellow, and red shall be used, except for pedestrian control signals, and those lights shall indicate and apply to drivers of vehicles, operators of bicycles, and pedestrians as provided in this chapter.

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

SEC. 1.5. Section 21450 is added to the Vehicle Code, to read:

21450. (a) Whenever traffic is controlled by official traffic control signals showing different colored lights, or colored lighted arrows, successively, one at a time, or in combination, only the colors green, yellow, and red shall be used, except for pedestrian control signals, and those lights shall indicate and apply to drivers of vehicles and pedestrians as provided in this chapter.

(b) This section shall become operative on January 1, 2005.

SEC. 2. Section 21456.2 is added to the Vehicle Code, to read:

21456.2. (a) Unless otherwise directed by a bicycle signal as provided in Section 21456.3, an operator of a bicycle shall obey the provisions of this article applicable to the driver of a vehicle.

(b) Whenever an official traffic control signal exhibiting different colored bicycle symbols is shown concurrently with official traffic control signals exhibiting different colored lights or arrows, an operator of a bicycle facing those traffic control signals shall obey the bicycle signals as provided in Section 21456.3.

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

SEC. 3. Section 21456.3 is added to the Vehicle Code, to read:

21456.3. (a) An operator of a bicycle facing a green bicycle signal shall proceed straight through or turn right or left or make a U-turn unless a sign prohibits a U-turn. An operator of a bicycle, including

one turning, shall yield the right-of-way to other traffic and to pedestrians lawfully within the intersection or an adjacent crosswalk.

(b) An operator of a bicycle facing a steady yellow bicycle signal is, by that signal, warned that the related green movement is ending or that a red indication will be shown immediately thereafter.

(c) Except as provided in subdivision (d), an operator of a bicycle facing a steady red bicycle signal shall stop at a marked limit line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then before entering the intersection, and shall remain stopped until an indication to proceed is shown.

(d) Except when a sign is in place prohibiting a turn, an operator of a bicycle, after stopping as required by subdivision (c), facing a steady red bicycle signal, may turn right, or turn left from a one-way street onto a one-way street. An operator of a bicycle making a turn shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to traffic lawfully using the intersection.

(e) A bicycle signal may be used only at those locations that meet geometric standards or traffic volume standards, or both, as adopted by the Department of Transportation.

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

SEC. 4. Section 39004 of the Vehicle Code is amended to read:

39004. Each licensing agency, by ordinance or resolution, may adopt rules and regulations for the collection of license fees. Revenues from license fees shall be retained by the licensing city or county and shall be used for the support of such bicycle ordinance or resolution, and may be used to reimburse retailers for services rendered. In addition, fees collected shall be used to improve bicycle safety programs and establish bicycle facilities, including bicycle paths and lanes, within the limits of the jurisdiction.

The fees required to be paid pursuant to this division are as follows:

(a) For each new bicycle license and registration certificate, the sum shall not exceed four dollars ($4) per year or any portion thereof.

(b) For each transfer of registration certificate, the sum shall not exceed two dollars ($2).

(c) For each replacement of a bicycle license or registration certificate, the sum shall not exceed two dollars ($2).

(d) For each bicycle license renewal, the sum shall not exceed two dollars ($2) per year.

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.

CHAPTER 278

An act to add and repeal Section 99315.5 of the Public Utilities Code, relating to transportation.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. The Legislature intends the funding exchange program authorized under this act to accomplish both of the following:

(a) Enable the Orange County Transportation Authority to continue operating bus and paratransit services at existing levels and thus comply with the legislative intent expressed in subdivision (d) of Section 29530.5 of the Government Code.

(b) Reduce the need, generated under the funding diversion process established pursuant to Section 29530.5 of the Government Code, for filings with the Controller by the authority's local funding exchange partners.

SEC. 2. Section 99315.5 is added to the Public Utilities Code, to read:

99315.5. (a) Pursuant to an agreement between the board of directors of the Orange County Transportation Authority and the department, the authority, acting as the board of directors of the Orange County Transit District, may exchange with the department funds apportioned and paid to the authority under paragraph (1) of subdivision (a) of Section 2128 of the Streets and Highways Code for state funds appropriated to the department under subdivision (c) of Section 99315, as follows:

(1) The authority shall notify the director on or before March 1 of its desire to participate during the subsequent fiscal year in the funding exchange program authorized under this section.

(2) Upon receipt of the notice required under paragraph (1), the director shall determine whether any of the funds to be appropriated to the department under subdivision (c) of Section 99315 will be available for the exchange and, on or before April 1, shall report to the Legislature and the Governor on all of the following:

(A) The amount that will be available for exchange.

(B) The state programs proposed to be funded during the following fiscal year with funds appropriated to the department under subdivision (c) of Section 99315, and the amounts proposed for each of those programs.

(C) The impacts of the proposed transfer of funds on each of those programs.

(3) Based upon the information provided under paragraph (2), the Legislature shall determine the portion of the department's appropriation under subdivision (c) of Section 99315 that may be allocated and transferred to the authority for the purposes of this section and shall designate that amount in the Budget Act.

(4) Upon receiving the appropriation under subdivision (c) of Section 99315, the department shall allocate and transfer to the authority from that appropriation the amount designated for that purpose under paragraph (3).

(5) Upon receiving the funds transferred under paragraph (4) and the apportionment under paragraph (1) of subdivision (a) of Section 2128 of the Streets and Highways Code, the authority shall transfer to the department from that payment an amount equal to the amount received under paragraph (4).

(b) (1) Nothing in this section affects the allocations under Sections 99313, 99314, and 99315.

(2) The department may not reduce any request for appropriation for any program funded under Section 99313, 99314, or 99315, except for programs funded under subdivision (c) of Section 99315, as a result of participating in the funding exchange program authorized under this section.

(c) The department shall expend the funds received from the authority under paragraph (5) of subdivision (a) exclusively for programs and projects funded from the Public Transportation Account in the State Transportation Fund, to the extent that the expenditure is authorized under Article XIX of the California Constitution.

(d) Funds received by the authority under paragraph (4) of subdivision (a) shall be used only for the purposes authorized under this article and are subject to all of the provisions of law applicable to funds allocated under Sections 99313 and 99314.

(e) This section shall become inoperative on June 30, 2003, and as of January 1, 2004, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 279

An act to add Section 44661.5 to the Education Code, relating to teachers.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. It is the intent of the Legislature to encourage the governing boards of school districts to review and consider the performance based teacher assessment methodology of the National Board for Professional Teaching Standards as a model for local district evaluation standards and procedures.

SEC. 2. Section 44661.5 is added to the Education Code, to read:

44661.5. When developing and adopting objective evaluation and assessment guidelines pursuant to Section 44660, a school district may, by mutual agreement between the exclusive representative of the certificated employees of the school district and the governing board of the school district, include any objective standards from the National Board for Professional Teaching Standards or any objective standards from the California Standards for the Teaching Profession if the standards to be included are consistent with this article. If the certificated employees of the school district do not have an exclusive representative, the school district may adopt objective evaluation and assessment guidelines consistent with this section.

CHAPTER 280

An act to amend Section 5440 of, and to add Section 5442.9 to, the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The provisions of Section 3 of this act relating to advertising displays are intended to only apply to small urbanized municipalities of limited population, area, and economic resources, which conditions significantly limit the ability of those jurisdictions to fund their economic development activities and support their essential social services.

(b) The Legislature has previously approved limited exceptions to outdoor advertising provisions for specific cities to identify development projects, business centers, or associations as a means of supporting economic development activities within those particular jurisdictions.

SEC. 2. Section 5440 of the Business and Professions Code is amended to read:

5440. Except as provided in Sections 5441, 5442, 5442.7, 5442.8, and 5442.9, no advertising display may be placed or maintained on

property adjacent to a section of a freeway that has been landscaped if the advertising display is designed to be viewed primarily by persons traveling on the main-traveled way of the landscaped freeway.

SEC. 3. Section 5442.9 is added to the Business and Professions Code, to read:

5442.9. (a) Notwithstanding Section 5440, a city described in subdivision (b) may erect a nonconforming display if all of the following apply:

(1) The display is placed on property that the city has owned since before January 1, 1995.

(2) Not more than one additional display is added to the number of signs within the city that do not conform to this article as of January 1, 2000.

(3) The display is located within the boundaries of the city.

(4) Placement or maintenance of the display does not require the immediate trimming, pruning, topping, or removal of existing trees to provide visibility to the display, unless done as part of the normal landscape maintenance activities that would have been undertaken without regard to the placement or maintenance of the display.

(5) No public funds are required to be expended to pay for the costs of the display.

(6) The display does not impose additional liability on the Department of Transportation.

(7) The display does not cause a reduction in federal aid highway funds, as provided in Section 131 of Title 23 of the United States Code.

(8) All proceeds received by a participating city by allowing the erection of the nonconforming display are expended by the city solely for parks and programs for at-risk youth.

(9) The display does not advertise products or services which are directed at an adult population, including, but not limited to, alcohol, tobacco, and gambling activities.

(b) For purposes of this section, city is any city that meets all of the following conditions:

(1) The city's population is 17,000 persons or less.

(2) The city's annual budget is less than eight million dollars ($8,000,000).

(3) The city's geographical area is less than 1.7 square miles.

(4) The city is located in an urbanized county containing a population of 6,000,000 or more persons.

CHAPTER 281

An act to amend Sections 44010 44332, 44346.1, and 44424 of the Education Code, relating to school employees.

[Approved by Governor August 31, 1999. Filed with
Secretary of State September 1, 1999.]

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

SECTION 1. Section 44010 of the Education Code is amended to read:

44010. "Sex offense," as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), or (c) of Section 243.4, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

SEC. 2. Section 44332 of the Education Code is amended to read:

44332. (a) Except where that service is provided by a school district authorized to register certification documents pursuant to Section 44332.5, each county or city and county board of education may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. However, the individual must have demonstrated proficiency in basic reading, writing, and mathematic skills pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than one calendar year from the date of issuance.

(b) The county or city and county board of education shall cancel the temporary certificate or permit immediately upon receipt of certification in writing from the commission that the applicant apparently does not possess adequate academic qualifications or apparently has a criminal record that would disqualify the applicant.

(c) A temporary certificate issued to a permit applicant is not valid beyond the time that the commission either issues or denies the originally requested permit. A temporary certificate issued to a credential applicant is not valid beyond the time that the commission provides written notification to the county or city and county board of education that the applicant apparently does not possess adequate qualifications, that the commission has received facts that may cause denial of the application, or issues or denies the originally requested credential.

(d) A county or city and county board of education may not issue a temporary certificate to an applicant whose teaching credential is revoked or suspended.

SEC. 3. Section 44346.1 of the Education Code is amended to read:

44346.1. (a) The commission shall deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony or a crime set forth in subdivision (a) of Section 44424 or whose employment has been denied or terminated pursuant to Section 44830.1.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), a person shall not be denied a credential solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

SEC. 4. Section 44424 of the Education Code is amended to read:

44424. (a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a serious or violent felony described in Section 44346.1, or any one or more of Penal Code Sections 187 to 191, 192 insofar as said section relates to voluntary manslaughter, 193, 194 to 217.1, both inclusive, 220, 222, 244, 245, 261 to 267, both inclusive, 273a, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to felony convictions, 503 and 504, or of Penal Code Section 272, becoming final, the commission shall forthwith revoke the credential.

(b) Upon a plea of nolo contendere that does not constitute a conviction pursuant to Section 1016 of the Penal Code, all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after 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 and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The commission shall revoke a credential issued to a person whose employment has been denied or terminated pursuant to Section 44830.1.

(d) Notwithstanding subdivision (a), a credential shall not be revoked solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

SEC. 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.

CHAPTER 282

An act to amend Section 11202.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 11202.5 of the Vehicle Code is amended to read:

11202.5. (a) The department shall license traffic violator school operators. No person shall act as a traffic violator school operator without a currently valid license issued by the department. Every person, in order to qualify as a traffic violator school operator, shall meet all of the following criteria in order to be issued a traffic violator school operator's license:

(1) Have not committed any act which, if the applicant were licensed as a traffic violator school operator, would be grounds for suspension or revocation of the license.

(2) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, teaching methods and techniques, traffic violator school statutes and regulations, and office procedures and recordkeeping.

(3) Be 18 years of age or older.

(4) Have worked for an established California traffic violator school or an established commercial driving training and education program operated by a bona fide labor organization as an instructor for a period of not less than 500 hours of actual inclass instruction.

(b) Paragraph (4) of subdivision (a) does not apply to a traffic violator school operator validly licensed prior to January 1, 1987.

(c) All the qualifying requirements specified in this section shall be met within one year from the date of application for the license or the application shall lapse. However, the applicant may thereafter submit a new application upon payment of the required fee.

CHAPTER 283

An act to amend Sections 89538 and 89539 of the Education Code, relating to the California State University.

[Approved by Governor August 31, 1999. Filed with
Secretary of State September 1, 1999.]

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

SECTION 1. Section 89538 of the Education Code is amended to read:

89538. (a) Notice of dismissal, demotion, or suspension for cause of an employee shall be in writing, signed by the chancellor or his or her designee and be served on the employee. The notice shall set forth a statement of causes, the events or transactions upon which the causes are based, the nature of the penalty and the effective date, and a statement of the employee's right to answer within 30 days and request a hearing before the State Personnel Board.

(b) Notice of the reassignment of an administrative employee pursuant to Section 66609 shall be in writing, and shall be served on the employee. The notice shall set forth a statement of the employee's right to answer within 30 days and request a hearing before the trustees. This hearing shall be only on the question of whether the position to which the employee is reassigned is commensurate with his or her qualifications.

SEC. 2. Section 89539 of the Education Code is amended to read:

89539. (a) (1) Any employee dismissed, suspended, or demoted for cause may request a hearing by the State Personnel Board by filing a request, in writing, with the board within 30 days of being served with the notice.

(2) The request may be on any one or more of the following grounds:

(A) The required procedure was not followed.

(B) There is no ground for dismissal, suspension, or demotion.

(C) The penalty is excessive, unreasonable, or discriminatory.

(D) The employee did not do the acts or omissions alleged as the events or transactions upon which the causes are based.

(E) The acts or omissions alleged as the events or transactions upon which the causes are based were justified.

(b) The State Personnel Board shall hold a hearing, following the same procedure as in state civil service proceedings, and shall render a decision affirming, modifying, or revoking the action taken. In a hearing, the burden of proof shall be on the party taking the dismissal action.

(c) An administrative employee reassigned pursuant to Section 66609 may request a hearing by the trustees by filing a request for a hearing, in writing, with the trustees within 30 days of being served with the notice. The request may be on the grounds that the required procedure was not followed or that the position to which the employee is reassigned is not commensurate with his or her qualifications. The trustees shall hold a hearing, and shall render a decision affirming, modifying, or revoking the action taken.

(d) The State Personnel Board may bill the California State University for the costs incurred in conducting hearings involving employees of the California State University pursuant to Sections 89535 to 89542, inclusive.

CHAPTER 284

An act to amend Section 4320 of the Family Code, relating to spousal support.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 4320 of the Family Code is amended to read:

4320. In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability to pay of the supporting party, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting

party where the court finds documented evidence of a history of domestic violence, as defined in Section 6211, against the supported party by the supporting party.

(i) The immediate and specific tax consequences to each party.

(j) The balance of the hardships to each party.

(k) The goal that the supported party shall be self-supporting within a reasonable period of time. A "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section and the circumstances of the parties.

(*l*) Any other factors the court determines are just and equitable.

CHAPTER 285

An act to add Chapter 4.7 (commencing with Section 89440) to Part 55 of the Education Code, relating to the California State University.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Chapter 4.7 (commencing with Section 89440) is added to Part 55 of the Education Code, to read:

CHAPTER 4.7. CALIFORNIA STATE UNIVERSITY PROGRAM FOR EDUCATION AND RESEARCH BIOTECHNOLOGY

89440. (a) The Legislature hereby finds and declares all of the following:

(1) The biotechnology industry in California is a rapidly growing industry that will be a critical factor in the state's economic success in the new millennium.

(2) The California State University plays a significant role in the production and maintenance of the work force for this rapidly growing industry.

(3) The California State University Program for Education and Research in Biotechnology (program) was created in 1987 to provide a coordinated and amplified development of biotechnology research and education within the California State University, to foster competitiveness in the industry on both the state and national levels, to facilitate training of a sufficient number of biotechnology technicians and scientists, to catalyze technology transfer and enhance intellectual property protection, and to facilitate the

acquisition and long-term maintenance of state-of-the-art biotechnology resource facilities.

(4) The program facilitates interdisciplinary cooperative activities between the biology and chemistry departments on all California State University campuses and between faculty and a number of allied academic and research units, including bioengineering, agricultural biotechnology, environmental and natural resources, molecular ecology, and marine biotechnology.

(5) The program conducts a number of activities, including a competitive applied research and education grants program, the upgrade of biotechnology instructional and research equipment, the development of specialized training facilities, and involvement in secondary educator in-service and preservice biotechnological training.

(6) The program serves as the official liaison among the California State University and industry, government, the Congressional Biotechnology Caucus, and the public arena in biotechnological matters.

(7) One million dollars ($1,000,000) was appropriated for this program in the Budget Act of 1999.

(b) It is the intent of the Legislature to provide additional state funding, if state revenues allow, to the California State University to maintain the California State University Program for Education and Research in Biotechnology at a level that will maintain and enhance its role in the preparation of the work force in this critical industry.

CHAPTER 286

An act to add Section 44015.1 to the Education Code, relating to Week of the School Administrator.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 44015.1 is added to the Education Code, to read:

44015.1. In observance of the importance of educational leadership at the school, school district, and county levels, the first full week in the month of March of each year shall be designated as "Week of the School Administrator." Schools, school districts, and county superintendents of schools are encouraged to observe the week with public recognition of the contribution that school administrators make to successful pupil achievement.

CHAPTER 287

An act to amend Sections 45048 and 45049 of the Education Code, relating to certificated school employees.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 45048 of the Education Code is amended to read:

45048. (a) Each salary payment for any calendar month may be made on the last working day of the month and shall be paid not earlier than the last working day of the month and not later than the fifth day of the succeeding calendar month except that teachers employed for less than full time in classes for adults, in a day or evening high school, or in a special day or evening class maintained in connection with an elementary school shall be paid on or before the 10th day of the succeeding calendar month for services performed during the preceding calendar month.

(b) If the school district provides for the payment of the salary of employees employed in positions requiring certification qualifications once each two weeks, twice a month, or once each four weeks, pursuant to Section 45038, each salary payment may be made on the last working day of the regular payroll period and shall be made not earlier than the last working day of the regular payroll period and not later than the eighth working day of the following regular payroll period.

(c) If a salary payment is not made timely as required by this section, the amount of the salary payment due shall be increased by an amount of interest on the unpaid amount for each day of delay.

(d) A certificated employee of a school district who qualifies for a salary increase shall be paid the increased salary not later than three regular pay periods or three months, whichever is longer, after the employee files proper documentation where required for the salary increase. The district shall additionally pay the employee daily interest on the amount owed to the employee calculated from the date that the employee was entitled to the salary increase if the school district does not pay the employee his or her salary increase within three regular pay periods or three months, whichever period is longer, after the employee files proper documentation where required for the salary increase. All amounts due the employee resulting from the salary increase and not paid to the employee at the time that the employee actually receives the salary increase shall be paid to the employee within 20 business days of the date that the employee actually received the salary increase. The district shall additionally pay the employee daily interest on the amount owed to

the employee calculated from the date that the employee was entitled to the salary increase if the district does not pay the employee all amounts due the employee resulting from the salary increase within 20 business days following the date that the employee actually received the salary increase.

(e) The amount of interest required by subdivisions (c) and (d) shall be determined by the method established in Section 19521 of the Revenue and Taxation Code.

(f) This section shall not prohibit a school district from making a payment of earned salary before the last working day of the month or regular payroll period.

SEC. 2. Section 45049 of the Education Code is amended to read:

45049. (a) When any school district employs a certificated employee to perform teaching or other services in addition to his or her regular teaching duties, or when a school district employs a certificated employee to perform teaching or other services at a summer school maintained by the district, the district shall pay the employee for the services either in one lump sum or at an hourly, daily, biweekly, quadriweekly, or monthly rate of pay. If the pay is in one lump sum, the district shall pay the employee within 10 days after the termination of the services. If the pay is at an hourly, daily, biweekly, quadriweekly or monthly rate, the district shall pay the employee within 10 days after the end of each calendar month or regular pay period during which the services are performed.

(b) If a salary payment is not made timely as required by this section, the amount of the salary payment due shall be increased by an amount of interest on the unpaid amount for each day of delay.

(c) A certificated employee of a school district who qualifies for a salary increase shall be paid the increased salary not later than three regular pay periods or three months, whichever is longer, after the employee files proper documentation where required for the salary increase. The district shall additionally pay the employee daily interest on the amount owed to the employee calculated from the date that the employee was entitled to the salary increase if the school district does not pay the employee his or her salary increase within three regular pay periods or three months, whichever is longer, after the employee files proper documentation where required for the salary increase. All amounts due the employee resulting from the salary increase and not paid to the employee at the time that the employee actually receives the salary increase shall be paid to the employee within 20 business days of the date that the employee actually received the salary increase. The district shall additionally pay the employee daily interest on the amount owed to the employee calculated from the date that the employee was entitled to the salary increase if the district does not pay the employee all amounts due the employee resulting from the salary increase within 20 business days following the date that the employee actually received the salary increase.

(d) The amount of interest required by subdivisions (b) and (c) shall be determined by the method established in Section 19521 of the Revenue and Taxation Code.

CHAPTER 288

An act to amend Section 23320.6 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 23320.6 of the Business and Professions Code is amended to read:

23320.6. (a) The Wine Safety Fund is hereby created as a special fund in the State Treasury, in trust, to the State Department of Health Services for the purpose of providing funds to better enable its Food and Drug Branch to carry out and supervise a statistically valid testing program to ensure that levels of lead in wine sold in this state remain safe and within tolerances established by applicable laws and regulations, for the health and safety of the consuming public upon appropriation by the Legislature in the annual Budget Act. The fees collected pursuant to Section 23320.7 shall be sufficient to cover, but shall not exceed, the costs of administering the testing program, including the reimbursement of any importer or retailer for the wholesale cost of any wine tested, conducted pursuant to this section. All moneys collected under Section 23320.7, including any interest accrued thereon, shall be deposited in the Wine Safety Fund.

(b) It is the intent of the Legislature to appropriate moneys in the Wine Safety Fund in equal amounts of fifty-five thousand three hundred dollars ($55,300) over five years to the State Department of Health Services for expenditure exclusively for the purposes set forth in subdivision (a).

CHAPTER 289

An act to amend Section 6358 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 6358 of the Revenue and Taxation Code is amended to read:

6358. There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of:

(a) Any form of animal life the products of which ordinarily constitute food for human consumption.

(b) Feed for any form of animal life the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(c) Seeds and plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(d) Fertilizer to be applied to land the products of which are to be used as food for human consumption or are to be sold in the regular course of business.

(e) On or after January 1, 1997, drugs or medicines, including oxygen, the primary purpose of which is the prevention or control of disease, that are administered to animal life the products of which ordinarily constitute food for human consumption.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 290

An act to amend Section 114145 of the Health and Safety Code, relating to food facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 114145 of the Health and Safety Code is amended to read:

114145. (a) Each food establishment, except produce stands and swap meet prepackaged food stands, shall be fully enclosed in a

building consisting of floors, walls, and an overhead structure that meet the minimum standards prescribed by this chapter. Food establishments that are not fully enclosed on all sides and that are in operation on January 1, 1985, shall not be required to meet the requirement for a fully enclosed structure pursuant to this section.

(b) This section shall not be construed to require the enclosure of any of the following:

(1) Dining areas.

(2) Open-air barbecue facilities.

(3) Outdoor wood-burning ovens that meet all of the food preparation and safety requirements applicable to open-air barbecue facilities.

(4) Outdoor displays that meet all of the following requirements:

(A) Only prepackaged nonpotentially hazardous food, uncut produce, or both is displayed or sold in the outdoor displays.

(B) Outdoor displays are contiguous with a fully enclosed food establishment that is in compliance with subdivision (a).

(C) Outdoor displays have overhead protection that extends over all food items.

(D) Food items from the outdoor display are stored inside a fully enclosed food establishment that is in compliance with subdivision (a) at all times other than during business hours. Any food items to be stored pursuant to this subdivision shall be stored in accordance with subdivision (a) of Section 114080.

(E) Outdoor displays comply with Section 114010 and have been approved by the enforcement agency.

(F) Outdoor displays are under the constant and complete control of the operator of the permitted food establishment.

(c) This section shall not be construed to require the enclosure during operating hours of customer self-service nonpotentially hazardous bulk beverage dispensing operations that meet the following requirements:

(1) The dispensing operations are installed contiguous with a fully enclosed food establishment that is in compliance with subdivision (a) and operated by the food establishment.

(2) The beverages are dispensed from enclosed equipment that precludes exposure of the beverages until they are dispensed at the nozzles.

(3) Ice is dispensed only from an ice maker-dispenser. Ice is not scooped or manually loaded into an ice dispenser out-of-doors.

(4) Single-service utensils are protected from contamination and are individually wrapped or dispensed from approved sanitary dispensers.

(5) The dispensing operations have overhead protection that fully extends over all equipment associated with the facility.

(6) During nonoperating hours the dispensing operations are fully enclosed so as to be protected from contamination by vermin and exposure to the elements.

(7) The owner or operator of the food establishment demonstrates to the enforcement agency that acceptable methods are in place to properly clean and sanitize the beverage dispensing equipment.

(8) Beverage dispensing operations are in compliance with Section 114010 and have been approved by the enforcement agency.

(9) Beverage dispensing operations are under the constant and complete control of the permitholder of the food establishments who is operating the dispensing facility.

(d) This section shall not be construed to allow outdoor displays in violation of local ordinances.

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.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that restaurants in California may lawfully operate outdoor wood-burning ovens at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 291

An act to amend Section 211 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 211 of the Revenue and Taxation Code is amended to read:

211. (a) The exemption of fruit- and nut-bearing trees until four years after the season in which they were planted in orchard form and grapevines until three years after the season in which they were planted in vineyard form is as specified in subdivision (i) of Section 3 of Article XIII of the Constitution. For purposes of exemption pursuant to this subdivision, any fruit- or nut-bearing tree, or any grapevine, severely damaged during the exemption period by the December 1990 freeze so as to require pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree

or grapevine, shall be considered a new planting in orchard or vineyard form. For purposes of exemption pursuant to this subdivision, any fruit- or nut-bearing tree severely damaged during the exemption period by the December 1998 freeze so as to require pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree shall be considered a new planting in orchard form.

(b) The exemption of timber is as specified in subdivision (j) of Section 3 of Article XIII of the Constitution and Section 436.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 292

An act to add Sections 42846.5 and 42889.1 to the Public Resources Code, relating to solid waste.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 42846.5 is added to the Public Resources Code, to read:

42846.5. If the owner of property upon which waste tires are unlawfully stored, stockpiled, or accumulated refuses to allow the board or its contractors access to enter onto the property and perform all necessary cleanup, abatement, or remedial work as authorized under Section 42846, the board or its contractors shall be permitted reasonable access to the property to perform that activity if an order setting civil liability has been issued or obtained pursuant to Article 6 (commencing with Section 42850) by the board, or by its designee pursuant to subdivision (c) of Section 42850, against the property owner, and the board finds that there is a significant threat to public health or the environment.

SEC. 2. Section 42889.1 is added to the Public Resources Code, to read:

42889.1. Notwithstanding Section 7550.5 of the Government Code, each year, in conjunction with the State Budget submitted to the Legislature pursuant to Section 12 of Article IV of the California Constitution, the board shall submit to the appropriate policy and fiscal committees of the Legislature a report that describes the

expenditures proposed to be made for that fiscal year by the board for grants, loans, and contracts under the tire recycling program.

CHAPTER 293

An act to add Section 14669.14 to the Government Code, relating to state property, and making an appropriation therefor.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Section 14669.14 is added to the Government Code, to read:

14669.14. (a) The director may exercise the option to purchase 137,275 of net usable square feet of data center, office space, and appurtenances set forth in the lease for 3101 Gold Camp Drive, Rancho Cordova, California, 95670, for a price not to exceed forty-seven millions dollars ($47,000,000), for use by the Stephen P. Teale Data Center.

(b) The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) to finance the acquisition of the facilities authorized by subdivision (a) by exercise of the option to purchase. The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313.

The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of acquisition by exercise of the option to purchase, any additional sums necessary to pay interim and permanent financing costs, and costs to issue these bonds. The additional amount may include interest and a reasonable required reserve fund.

(c) Notwithstanding Section 13340, funds derived from the interim and permanent financing or refinancing of the facilities specified in this section are hereby continuously appropriated without regard to fiscal years for these purposes.

CHAPTER 294

An act to add Section 8587.7 to the Government Code, relating to seismic safety, and making an appropriation therefor.

[Approved by Governor August 31, 1999. Filed with
Secretary of State September 1, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The January 17, 1994, Northridge earthquake, measuring 6.8 magnitude on the Richter Scale, and its aftershocks, caused major damage in southern California.

(b) Structural damage in schools was minimal. Fortunately, the quake occurred at 4:31 a.m., but if students had been present, many could have been injured by nonstructural elements, such as light fixtures, ceilings, storage cabinets, and broken glass, that fell or collapsed during the earthquake.

(c) Affected school districts suffered many millions of dollars in damage, lost both computerized and written records, closed schools for one to eight weeks, and had to undertake massive cleanup and repair efforts. This massive disruption to schools was caused, for the most part, by damage to the contents of the school buildings, not to the buildings themselves.

(d) The Long Beach earthquake of 1933 demonstrated the hazards of structural collapse of school buildings and generated the building code requirements delineated in the Field Act. Field Act designed buildings performed very well in the Northridge earthquake; there was some structural damage, but no life-threatening building collapse. However, the Northridge earthquake made it clear that nonstructural hazards inside our schools might be deadly.

SEC. 2. Section 8587.7 is added to the Government Code, to read:

8587.7. (a) The Office of Emergency Services, in cooperation with the State Department of Education, the Department of General Services, and the Seismic Safety Commission, shall develop an educational pamphlet for use by grades K-14 personnel to identify and mitigate the risks posed by nonstructural earthquake hazards.

(b) The office shall print and distribute the pamphlet to the governing board of each school district and community college district in the state, along with a copy of the current edition of the office's school emergency response publication. The office shall also make the pamphlet or the current edition of the office's school emergency response publication available to a private elementary or secondary school upon request.

(c) The office, as soon as feasible, shall make the pamphlet and the current edition of the office's school emergency response publication available by electronic means, including, but not limited to, the Internet.

SEC. 3. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the General Fund to the Office of Emergency Services for the purposes of this act.

CHAPTER 295

An act to add and repeal Article 16 (commencing with Section 35400) of Chapter 2 of Part 21 of the Education Code, relating to the Los Angeles Unified School District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Article 16 (commencing with Section 35400) is added to Chapter 2 of Part 21 of the Education Code, to read:

Article 16. Los Angeles Unified School District

35400. (a) The Los Angeles Unified School District's Director of the Internal Audit and Special Investigations Unit is authorized to subpoena witnesses, administer oaths or affirmations, take testimony, and compel the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence deemed material and relevant to any inquiry or investigation undertaken by the director in the performance of his or her duties.

(b) Subpoenas shall be served in the manner provided by law for service of summons.

(c) For purposes of this section, Sections 11184, 11185, 11186, 11187, 11188, 11189, 11190, and 11191 of the Government Code shall apply to the subpoenaing of witnesses and documents, reports, answers, records, accounts, papers, and other data and documentary evidence as if the investigation was being conducted by a state department head, except that the applicable court for resolving motions to compel or motions to quash shall be the Superior Court for the County of Los Angeles.

(d) Notwithstanding any other provision of the law, any person who, after the administration of an oath or affirmation pursuant to this section, states or affirms as true any material matter which he or she knows to be false is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months or by a fine not to exceed five thousand dollars ($5,000), or by both that fine and imprisonment for the first offense. Any subsequent violation shall be punishable by imprisonment in a county jail not to exceed one year

or by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

(e) The director shall submit an interim report to the Legislature by July 1, 2000, and a final report by December 1, 2000, regarding the use and effectiveness of the subpoena power authorized by this section in the successful completion of his or her duties.

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

35401. (a) If the Director of the Internal Audit and Special Investigations Unit determines that there is reasonable cause to believe that an employee or outside agency has engaged in any illegal activity, he or she shall report the nature and details of the activity on a timely basis to the local district attorney or the Attorney General.

(b) The Director of the Internal Audit and Special Investigations Unit shall not have any enforcement power.

(c) Every investigation shall be kept confidential, except that the director may issue any report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals involved, or release any findings resulting from an investigation conducted pursuant to this article that is deemed necessary to serve the interests of the district.

(d) This section shall not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

SEC. 2. The Legislature finds and declares that, due to the unique circumstances applicable to the Director of the Internal Audit and Special Investigations Unit within the Los Angeles Unified School District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 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.

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 for the Director of the Internal Audit and Special Investigations Unit within the Los Angeles Unified School District to

perform its functions expeditiously, it is necessary that this act take effect immediately.

CHAPTER 296

An act relating to public employees' retirement.

[Became law without Governor's signature. Filed with Secretary of State September 1, 1999.]

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

SECTION 1. Notwithstanding Section 20035 of the Government Code, the retirement allowances of those former legislative employees who accepted an offer of early retirement in January, February, or March 1991 shall be recalculated based on the respective employee's highest average annual compensation during any 12-month consecutive period of employment.

CHAPTER 297

An act to add Section 83116.3 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 83116.3 is added to the Government Code, to read:

83116.3. Whenever the commission rejects the decision of an administrative law judge made pursuant to Section 11517, the commission shall state the reasons in writing for rejecting the decision.

SEC. 2. 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 298

An act to amend Section 1192.7 of the Penal Code, relating to serious felonies.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section, "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

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

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

(6) Lewd or lascivious act on a child under the age of 14 years.

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

(8) Any 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) False imprisonment as described in Section 210.5.

(23) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(24) Any felony in which the defendant personally used a dangerous or deadly weapon.

(25) 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.

(26) 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.

(27) Grand theft involving a firearm.

(28) Carjacking.

(29) Any violation of Section 288.5.

(30) Any violation of Section 244.

(31) Assault with a deadly weapon or instrument on a firefighter.

(32) Any violation of Section 264.1.

(33) Any violation of Section 12022.53.

(34) Any attempt to commit a crime listed in this subdivision other than an assault.

(35) Any conspiracy to commit an offense described in paragraph (25) as it applies to Section 11370.4 of the Health and Safety Code

where the defendant conspirator was substantially involved in the planning, direction, or financing of the underlying offense.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2. 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.

CHAPTER 299

An act relating to employment.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. The Legislature finds and declares that the Joint Enforcement Strike Force on the Underground Economy (JESF),

established pursuant to Section 329 of the Unemployment Insurance Code, enforces payroll tax laws in many sectors, including the construction and service industries. The Legislature finds and declares that the Division of Labor Standards Enforcement of the Department of Industrial Relations operates a program known as the Targeted Industries Partnership Program (TIPP). The Department of Industrial Relations also shall include the janitorial and building maintenance industry within the TIPP commencing in the 1999–2000 fiscal year and within the JESF commencing in the 2000–01 fiscal year.

CHAPTER 300

An act to amend Section 17620 of the Education Code, relating to schools.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 17620 of the Education Code is amended to read:

17620. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C) (i) Except at otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential

construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the

amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

CHAPTER 301

An act to amend Section 13510 of, and to add Section 13526.2 to, the Penal Code, relating to peace officers, and making an appropriation therefor.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a

county sheriff's office, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or housing authority police departments.

The commission also shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.1, and housing authority police departments.

These rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability. Job-related standards which are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which

standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a). Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, "primary responsibility" refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

(d) Nothing in this section shall prohibit a local agency from establishing selection and training standards which exceed the minimum standards established by the commission.

SEC. 2. Section 13526.2 is added to the Penal Code, to read:

13526.2. Notwithstanding Section 13526, for the purposes of this chapter, the housing authority police departments of the City of Los Angeles and the City of Oakland shall be entitled to receive funding from the Peace Officers' Training Fund.

CHAPTER 302

An act to add Section 1736 to the Labor Code, relating to prevailing wages.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 1736 is added to the Labor Code, to read:

1736. During any investigation conducted under this part, the Division of Labor Standards Enforcement shall keep confidential the name of any employee who reports a violation of this chapter and any other information that may identify the employee.

CHAPTER 303

An act to amend Section 597s of the Penal Code, relating to animals.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 597s of the Penal Code is amended to read:

597s. (a) Every person who willfully abandons any animal is guilty of a misdemeanor.

(b) This section shall not apply to the release or rehabilitation and release of native California wildlife pursuant to statute or regulations of the California Department of Fish and Game.

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.

CHAPTER 304

An act to add Section 17284.5 to the Education Code, relating to schools.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 17284.5 is added to the Education Code, to read:

17284.5. (a) Notwithstanding any provision of law to the contrary, any waiver granted by the State Allocation Board to a school district for use of a nonconforming existing private building acquired for conversion for use as a school building, that had not expired prior to January 1, 2000, is hereby extended until January 1, 2001, if the work to make the building a conforming structure commenced prior to January 1, 2000, but had not been completed by that date.

CHAPTER 305

An act to amend Section 53270 of the Government Code, relating to firefighters.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 53270 of the Government Code is amended to read:

53270. (a) The Legislature hereby finds that the hiring of permanent career civilian federal firefighters by local agencies as specified in this section is in need of uniform statewide regulation and constitutes a matter of statewide concern that shall be governed solely by this section.

(b) Notwithstanding any other provision of law, upon approval by its governing body, a fire protection district or the fire department of a city, including a charter city, county, or city and county, when hiring additional firefighters, may appoint as a member or officer of that fire protection district or fire department any person who meets all of the following criteria:

(1) Was serving as a permanent career civilian federal firefighter in good standing at any United States military installation within the state.

(2) Has satisfactorily completed all firefighter training required for employment as a permanent career civilian federal firefighter.

(3) Was, as a consequence of the closure, downsizing, or realignment of a federal military installation, terminated as a permanent career civilian federal firefighter within 48 months prior to the appointment.

(c) The appointment authority created by this section shall take precedence over any provision of, or any condition or circumstance arising from a provision of, a charter, ordinance, or resolution that governs employment of firefighters, that would otherwise frustrate the purpose of this section, including, but not limited to, the following:

(1) The fire protection district or fire department maintains a civil service or merit system governing the appointment of firefighters.

(2) The fire protection district or fire department has available to it an eligible or regular reemployment list of persons eligible for those appointments.

(3) The appointed person is not on any eligible list.

(d) A fire protection district or fire department may not employ a person pursuant to this section if a special reemployment list is in existence for the firefighter position to be filled.

(e) If a fire protection district or fire department determines to appoint a person pursuant to this section, it shall give first priority to residents of the district or city, and second priority to residents of the county not residing in the district or city.

(f) The seniority, seniority-related privileges, and rank that a permanent career civilian federal firefighter possessed while employed at a federal military installation shall not be required to be transferred to a position in a fire protection district or fire department obtained pursuant to the provisions of this section.

(g) To effectuate the purposes of this section, the California Firefighter Joint Apprenticeship Program may administer, prepare, and circulate to fire districts and fire departments a list of permanent career civilian federal firefighters eligible for appointment pursuant to this section.

Placement on the list compiled by the California Firefighter Joint Apprenticeship Program shall be governed by length of service as a permanent career civilian federal firefighter. A permanent career civilian federal firefighter may apply for placement on the list after he or she receives a notice of termination of position or a priority placement notice, and shall remain on the list for a period of 48 months.

SEC. 2. The amendments to paragraph (1) of subdivision (b) of Section 53270 of the Government Code enacted by this act do not constitute a change in, but are declaratory of, existing law.

CHAPTER 306

An act to amend Section 106 of the Labor Code, and to amend Section 329 of the Unemployment Insurance Code, relating to the economy.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 106 of the Labor Code is amended to read:

106. (a) The Labor Commissioner may authorize an employee of any of the agencies that participate in the Joint Enforcement Strike Force on the Underground Economy, as defined in Section 329 of the Unemployment Insurance Code, to issue citations pursuant to Sections 226.4 and 1022 and issue and serve a penalty assessment order pursuant to subdivision (a) of Section 3722.

(b) No employees shall issue citations or penalty assessment orders pursuant to this section unless they have been specifically designated, authorized, and trained by the Labor Commissioner for this purpose. Appeals of all citations or penalty assessment orders shall follow the procedures prescribed in Section 226.5, 1023, or 3725, whichever is applicable.

(c) This section 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. 2. Section 329 of the Unemployment Insurance Code is amended to read:

329. (a) The director, or his or her designee, shall serve as Chairperson of the Joint Enforcement Strike Force on the

Underground Economy provided for in Executive Order W-66-93. The strike force shall include, but not be limited to, representatives of the Employment Development Department, the Department of Consumer Affairs, the Department of Industrial Relations, and the Office of Criminal Justice Planning. Other agencies that are not part of the administration, such as the Franchise Tax Board, the State Board of Equalization, and the Department of Justice, are encouraged to participate in the strike force.

(b) The strike force shall have the following duties:

(1) To facilitate and encourage the development and sharing of information by the participating agencies necessary to combat the underground economy.

(2) To improve the coordination of activities among the participating agencies.

(3) To develop methods to pool, focus, and target the enforcement resources of the participating agencies in order to deter tax evasion and maximize recoveries from blatant tax evaders and violators of cash-pay reporting laws.

(4) To reduce enforcement costs wherever possible by eliminating duplicative audits and investigations.

(c) In addition, the strike force shall be empowered to:

(1) Form joint enforcement teams when appropriate to utilize the collective investigative and enforcement capabilities of the participating members.

(2) Establish committees and rules of procedure to carry out the activities of the strike force.

(3) To solicit the cooperation and participation of district attorneys and other state and local agencies in carrying out the objectives of the strike force.

(4) Establish procedures for soliciting referrals from the public, including, but not limited to, an advertised telephone hotline.

(5) Develop procedures for improved information sharing among the participating agencies, such as shared automated information data base systems, the use of a common business identification number, and a centralized debt collection system.

(6) Develop procedures to permit the participating agencies to use more efficient and effective civil sanctions in lieu of criminal actions wherever possible.

(7) Evaluate, based on its activities, the need for any statutory change to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve the ability of the participating agencies to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(E) Establish sharable information data bases.

(F) Establish a common business identification number for use by participating agencies.

(G) Establish centralized, automated debt collection services for the participating agencies.

(H) Strengthen civil penalty procedures to allow the strike force to emphasize civil rather than criminal penalties wherever possible.

(d) The strike force shall report to the Governor and the Legislature annually during the period of its existence, commencing February 1, 1995, regarding its activities.

The report shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited, investigated, or prosecuted through civil action or referred for criminal prosecution.

(2) Actions taken by the strike force to publicize its activities.

(3) Efforts made by the strike force to establish an advertised telephone hotline for receiving referrals from the public.

(4) Procedures for improving information sharing among the agencies represented on the strike force.

(5) Steps taken by the strike force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any statutory changes needed to accomplish the goals described in paragraph (7) of subdivision (c).

(e) This section 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.

CHAPTER 307

An act to amend Section 9357.3 of, to add Part 8 (commencing with Section 22970) to Division 5 of Title 2 of, to repeal Article 9 (commencing with Section 9380) of Chapter 3.5 of Part 1 of Division 2 of Title 2 of, and to repeal Article 3 (commencing with Section 20720) of Chapter 8 of Part 3 of Division 5 of Title 2 of, the Government Code, relating to state employee benefits, and making an appropriation therefor.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 9357.3 of the Government Code is amended to read:

9357.3. If the membership of a member is terminated, except by death or retirement pursuant to this chapter, he or she shall be paid forthwith all of his or her accumulated contributions.

SEC. 2. Article 9 (commencing with Section 9380) of Chapter 3.5 of Part 1 of Division 2 of Title 2 of the Government Code is repealed.

SEC. 3. Article 3 (commencing with Section 20720) of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code is repealed.

SEC. 4. Part 8 (commencing with Section 22970) is added to Division 5 of Title 2 of the Government Code, to read:

PART 8. SUPPLEMENTAL CONTRIBUTIONS PROGRAM

CHAPTER 1. GENERAL PROVISIONS

22970. (a) The Supplemental Contributions Program is hereby established to be a defined contribution plan within the meaning of subsection (i) of Section 414 of Title 26 of the United States Code. This program shall operate solely at the option of the participants and shall in no way obligate employers for lifetime annuity payments to participating employees or their beneficiaries.

(b) This part does not establish a new program, but rather recodifies, and further defines the Supplemental Contributions Program as amended by Chapter 576 of the Statutes of 1994, to ensure full compliance with the applicable provisions of Title 26 of the United States Code.

22970.1. The benefits provided under the Supplemental Contributions Program shall supplement the benefits provided under Part 3 (commencing with Section 20000) and Chapter 3.5 (commencing with Section 9350) of Part 1 of Division 2.

22970.2. (a) The Supplemental Contributions Program is a qualified profit-sharing plan under paragraph (27) of subsection (a) of Section 401 of Title 26 of the United States Code.

(b) The design and administration of the Supplemental Contributions Program shall conform with the applicable provisions of Title 26 of the United States Code and the Revenue and Taxation Code.

22970.3. If any provision of this part or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this part that can be given effect without the invalid provision or application by a court of competent jurisdiction application, and to this end the provisions of this part are severable.

CHAPTER 2. DEFINITIONS

22970.10. "Account" means the account maintained with respect to the participant that reflects the aggregate value of the following amounts credited to the participant:

(a) Employee after-tax contributions to the plan.

(b) Net earnings of the Supplemental Contributions Program allocable to the participant.

(c) Any amount credited to the participant's account by reason of a transfer from another plan or arrangement in accordance with applicable laws.

22970.11. "Beneficiary" means any person or persons designated by the participant pursuant to this part, or otherwise entitled by statute, to receive distributions from the participant's account upon the death of the participant.

22970.12. "Board" means the Board of Administration of the Public Employees' Retirement System.

22970.13. "Compensation" means the total amount paid to an employee for a plan year as required to be reported on the employee's Internal Revenue Service form W-2 for income tax withholding purposes. This amount shall include employee contributions picked up by the employer under paragraph (2) of subsection (h) of Section 414 of Title 26 of the United States Code; and any amounts deducted by the employer from the participant's salary, including deductions for tax-deferred retirement plans or insurance programs; deductions for participation in a tax-sheltered annuity within the meaning of Section 403(b) of Title 26 of the United States Code; deductions for participation in an eligible deferred compensation plan within the meaning of Section 457 of Title 26 of the United States Code; and deductions for participation in a plan that meets the requirements of Section l25 or subsection (k) of Section 401 of Title 26 of the United States Code.

22970.14. "Disability" means a disability of permanent or extended and uncertain duration, as determined by the board.

22970.15. "Early retirement age" means the age at which the participant attains age 50 or qualifies for early retirement under Part 3 (commencing with Section 20000).

22970.16. (a) "Eligible employee" means:

(1) Any person employed by the state, the university, a school employer, or a contracting agency who is a member of the system as defined pursuant to the provisions of Chapter 4 (commencing with Section 20370) of Part 3.

(2) Any legislator, as defined pursuant to Section 9351.3, who is a member of the Legislators' Retirement System.

(b) The board shall determine when the members of the system who are employed by a school employer or a contracting agency shall become eligible employees.

22970.17. "Employee contribution" means the amount contributed by the participating employee to his or her account in the plan.

22970.18. "Fund" means the Supplemental Contributions Program Fund.

22970.19. "Net earnings" means the income earned, or losses incurred, on the Supplemental Contributions Program Fund, less the costs of administering the plan.

22970.20. "Participant" means an eligible employee who has contributions credited under the plan.

22970.21. "Plan" means the Supplemental Contributions Program.

22970.22. "Plan year" means the 12-month period commencing on any January 1 and ending on the following December 31.

22970.23. "Retirement" means termination of all employment for the employer and completion of all conditions precedent to receiving a distribution for retirement.

22970.24. "System" means the Public Employees' Retirement System.

22970.25. "Termination" means termination of employment by reason of separation from all service for all employers that participate in the system.

22970.26. "Valuation date" means the date as of which the assets of the fund are valued.

CHAPTER 3. ADMINISTRATION OF THE PLAN

22970.30. (a) Except as provided in this part, the plan shall be administered by the board in conformity with its powers and duties for administration of the system as set forth in Part 3 (commencing with Section 20000). The board shall, to the extent that it determines feasible, follow the procedures set forth in Article 7 (commencing with Section 20220) of Chapter 2 of Part 3.

(b) The board may retain a third-party administrator to perform investment management, recordkeeping, customer service, or other plan administration services and the expenses associated with such retention shall be paid from the fund.

22970.31. (a) The board shall adopt a plan instrument embodying the material terms and conditions of the plan consistent with this part and the applicable provisions of Title 26 of the United States Code.

(b) The board may, as it deems necessary or appropriate, amend the plan consistent with this part and the applicable provisions of Title 26 of the United States Code.

22970.32. With regard to the plan, the board shall not engage in any transaction prohibited by subsection (b) of Section 503 of Title 26 of the United States Code.

22970.33. The board may require a third-party administrator, recordkeeper, custodian, or investment manager that is contracted with, or appointed by, the system to be subject to the duties set forth in Section 24032.

CHAPTER 4. THE FUND

22970.40. The Supplemental Contributions Program Fund is hereby established as a special trust fund in the State Treasury to accept participant contributions to the plan.

22970.41. The board shall have control of the investment of the assets of the fund.

22970.42. Notwithstanding any other provision of law, the board may retain a bank or trust company to serve as a custodian for safekeeping, recordkeeping, delivery, securities valuation, investment performance reporting, or other services in connection with investment and administration of the fund.

22970.43. Notwithstanding Section 13340, all moneys in the fund are continuously appropriated, without regard to fiscal years or plan years, to the board to carry out the purposes of this part.

22970.44. The assets of the fund shall be valued annually, and may be valued more frequently as prescribed by the board.

CHAPTER 5. ELIGIBILITY

22970.50. Any person who is an eligible employee may elect, in a manner prescribed by the board, to participate in the plan.

CHAPTER 6. CONTRIBUTIONS

22970.55. (a) Employee contributions to the plan shall be made solely at the option of the participant.

(b) Employee contributions may be made directly by the participant to the plan on a periodic basis as specified by the board, or may be withheld from the employee's compensation after taxes and submitted by the employer through payroll deduction.

(c) The board shall establish the minimum contribution amount.

22970.56. (a) Notwithstanding any other provision of law to the contrary, contributions to the plan shall be subject to the applicable limitations imposed by Section 415 of Title 26 of the United States Code, as that section may be amended from time to time and as these limits may be adjusted by the Commissioner of Internal Revenue.

(b) Notwithstanding any other provision of law or contract to the contrary, the amount of compensation that is taken into account in determining the allocations to each participant's account under the plan shall not exceed the applicable annual compensation limitations prescribed by paragraph (17) of subsection (a) of Section 401 of Title 26 of the United States Code, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue.

(c) The plan shall provide for the return of excess annual additions and the gain attributable thereto in accordance with Section 415 of Title 26 of the United States Code. In the event that a participant

participates in more than one plan of the employer, any annual additions shall be deemed to consist first of annual additions to this plan.

22970.57. (a) There shall be no employer contributions to the plan.

(b) There shall be no employer payment of participant contributions on behalf of a participant in accordance with paragraph (2) of subsection (h) of Section 414 of Title 26 of the United States Code.

CHAPTER 7. PARTICIPATION ACCOUNTS

22970.60. Contributions made by the participant to the plan shall be credited to the participant's account.

22970.61. In the case of a contribution that is made under a mistake of fact, nothing in this part shall prohibit the return of that contribution to the participant within one year after discovery of the mistake.

22970.62. The net earnings of the fund shall be allocated to the participant's account as of each valuation date.

22970.63. The value of each participant's account shall be determined at least once annually in a manner prescribed by the board.

22970.64. A participant shall receive a statement that displays the value, or balance, of the participant's account and summarizes any credits to the account or other transactions.

CHAPTER 8. RIGHTS TO ALLOCATIONS

22970.65. A participant has a vested right to 100 percent of the value of the participant's account. The right accrues when the person becomes a participant.

22970.66. The right of a participant to allocations to the participant's account is not subject to execution or any other process whatsoever, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and is unassignable except as specifically provided under this part.

CHAPTER 9. COMMUNITY PROPERTY

22970.70. (a) Upon the legal separation or dissolution of marriage of a participant, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided in accordance with subdivision (a) of Section 2610 of the Family Code, the court shall order that the allocations to the participant's account during the marriage be divided into two separate and distinct accounts in the name of the participant and the nonparticipant spouse, respectively.

Any contributions or earnings that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the participant.

22970.71. For purposes of this chapter, "nonparticipant spouse" means the spouse or the former spouse of the participant, who as a result of petitioning the court for the division of community property, has been awarded a portion of the allocations to the participant's account during the marriage to the participant.

22970.72. The nonparticipant spouse shall have the right to a lump sum distribution of the amount awarded to the nonparticipant spouse by the judgment or court order.

CHAPTER 10. BENEFICIARY

22970.75. The participant may designate any person or persons as beneficiaries to receive any amount that may be payable upon the death of the participant pursuant to the provisions of Section 22970.88. The beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the participant, and delivered to a plan representative prior to the participant's death.

22970.76. Notwithstanding Section 22970.75, the participant's beneficiary designation shall not be given effect and shall be overridden to the extent that such a designation would impair the rights of any surviving spouse under applicable federal or state law.

22970.77. Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump sum distribution that may be payable from the participant's account upon the death of the participant.

22970.78. In the event the participant dies without a valid beneficiary designation on file, any balance remaining in the participant's account shall be payable to the participant's survivors in the following order:

(a) The participant's spouse.
(b) The participant's natural or adopted children.
(c) The participant's parents.
(d) The participant's estate.

CHAPTER 11. ELIGIBILITY FOR DISTRIBUTION

22970.80. (a) Upon termination for any reason other than death, disability, or retirement, a participant is entitled to a lump sum distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(b) Application for a distribution for termination of employment shall be made on a distribution request form and in the manner prescribed by the board.

(c) All employers with which the participant is employed as a member of the system shall certify on a form prescribed by the board that the participant's employment has terminated.

22970.81. (a) Upon termination, a participant may apply for a distribution for retirement, provided the retirement date is no earlier than the date on which the participant attains the early retirement age pursuant to the provisions of Part 3 (commencing with Section 20000). The retirement benefit is a distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(b) Application for a distribution for retirement shall be made on a distribution request form and in the manner prescribed by the board.

(c) All employers with which the participant is employed as a member of the system, shall certify on a form prescribed by the board that the participant's employment has terminated.

22970.82. (a) Upon termination, a participant may apply for a distribution for disability. A distribution for disability shall become payable only upon a determination by the board that the participant has a disability of permanent or extended and uncertain duration. The disability benefit is a distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(b) Application for a distribution for disability shall be made on a distribution request form and in the manner prescribed by the board.

(c) All employers with which the participant is employed as a member of the system shall certify on a form prescribed by the board that the participant's employment has terminated.

22970.83. (a) Upon receipt of proof of a participant's death, the beneficiary or beneficiaries shall be entitled to a death benefit that is a lump sum distribution of the balance remaining in the participant's account.

(b) If the participant died prior to termination of employment or distribution of all of the contributions and earnings credited to the participant's account, the lump sum distribution shall be an amount that is equal to the balance remaining in the participant's account.

(c) Application for the distribution shall be made on an application form and in the manner prescribed by the board.

22970.84. (a) Any participant who is entitled to a distribution may elect to receive the distribution in either of the following forms:

(1) A single lump sum payment.

(2) Substantially level installment payments for a period of years that extends no longer than the life expectancy of the participant.

(b) Any beneficiary who is entitled to a distribution may elect to receive the distribution in either of the following forms:

(1) A single lump sum payment.

(2) Substantially level installment payments for a period of years that extends no longer than the life expectancy of the beneficiary.

CHAPTER 12. DISTRIBUTIONS AND ROLLOVERS

22970.85. Notwithstanding any other provision of this part, a participant or beneficiary shall not be permitted to elect a distribution under this part that does not satisfy the requirements of paragraph (9) of subsection (a) Section 401 of Title 26 of the United States Code, including the incidental death benefit requirements of subparagraph (G) of paragraph (9) of subsection (a) of Section 401 and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(a) In the case of a lump sum distribution to the participant, the lump sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of $70^1/_2$ years or the calendar year in which the participant terminates employment.

(b) In the case of a distribution to the participant in the form of periodic payments, payment shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of $70^1/_2$ years or the calendar year in which the participant terminates employment.

(c) In the case of a benefit payable on account of the participant's death after distributions to the participant have commenced in the form of periodic payments, the remainder of the participant's account shall be distributed at least as rapidly as if the participant had not died.

(d) In the case of a benefit payable on account of the participant's death before distributions to the participant have commenced, distributions shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the benefit is paid over a period not extending beyond the life expectancy of the beneficiary and distributions commence not later than December 31 of the calendar year immediately following the calendar year in which the participant died, or in the event that the beneficiary is the participant's spouse, distributions must commence on or before the later of either:

(1) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(2) December 31 of the calendar year in which the participant would have attained the age of $70^1/_2$ years.

22970.86. (a) Distributions from the plan shall be made as soon as practicable after the first valuation date immediately following the date of the request for distribution calculated based upon the valuation date immediately preceding the distribution.

(b) Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other law to the contrary, the death benefit payable under the plan may be

requested by the beneficiary and paid as soon as practicable following receipt of proof of the participant's death.

22970.87. (a) If a person becomes entitled to a distribution from the plan that constitutes an eligible rollover distribution within the meaning of paragraph (31) of subsection (a) of Section 401 of Title 26 of the United States Code, the person may elect under terms and conditions established by the board to have the eligible rollover distribution or a portion thereof paid directly to a plan that constitutes an eligible retirement plan within the meaning of paragraph (31) of subsection (a) of Section 401, as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution by the plan of the amount so designated, once distributable under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified.

(b) Notwithstanding any other provision of this part or Part 3 (commencing with Section 20000), a participant may at any time, in writing, authorize the board to apply any or all of the participant's account to payment of any contributions required as a member of the system or payable to the system at the option of the member pursuant to any provision of Part 3 (commencing with Section 20000), except the normal monthly contributions required in Article 1 (commencing with Section 20671) of Chapter 8 of Part 3. Any distribution or transfer made pursuant to this subdivision shall comply with applicable provisions of Title 26 of the United States Code.

22970.88. Except as otherwise provided in this part, all distributions shall be made directly from the fund to the participant or beneficiary. To the extent required by federal and state law, income and other taxes shall be withheld from each distribution, and the payment shall be reported to the appropriate governmental agency or agencies.

22970.89. (a) The plan's obligations to a participant, beneficiary, or nonparticipant spouse who elected a lump sum distribution cease upon distribution of the lump sum benefit.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant, beneficiary, or nonparticipant spouse and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant, beneficiary, or nonparticipant spouse constitutes distribution of the benefit.

(3) If the participant, beneficiary, or nonparticipant spouse has elected on a form prescribed by the board to transfer all or a specific portion of the account that is eligible for a direct trustee-to-trustee transfer under paragraph (31) of subsection (a) of Section 401 of Title 26 of the United States Code to the trustee of a qualified plan under

Section 401 of Title 26 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes distribution of the benefit.

(b) The plan's obligations to a participant or beneficiary who elected to receive a benefit in the form of partial distributions cease upon distribution of the final payment.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant or beneficiary and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant or beneficiary constitutes distribution of the benefit.

(c) Distribution under paragraph (1), (2), or (3) of subdivision (a) or paragraph (1) or (2) of subdivision (b) pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the board, system, and plan from liability for payments.

CHAPTER 308

An act to amend Section 50710.1 of the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 50710.1 of the Health and Safety Code is amended to read:

50710.1. (a) If all the development costs of any migrant farm labor center assisted pursuant to this chapter are provided by federal, state, or local grants, and if inadequate funds are available from any federal, state, or local service to write-down operating costs, the department may approve rents for that center which are in excess of rents charged in other centers assisted by the Office of Migrant Services. However, prior to approving these rents, the department shall consider the adequacy of evidence presented by the entity operating the center that the rents reimburse actual, reasonable, and necessary costs of operation.

(b) At the end of each fiscal year, any entity operating a migrant farm labor center pursuant to this chapter may establish a reserve account comprised of the excess funds provided through the annual operating contract received from the department, if the department certifies there is no need to address reasonable general maintenance requirements or repairs, rehabilitation, and replacement needs of

the requesting migrant farm labor center which affect the immediate health and safety of residents. The cumulative balance of the reserve account shall not exceed 10 percent of the annual operating funds annually committed to the entity by the department. Funds in the reserve account shall be used only for capital improvements such as replacing or repairing structural elements, furniture, fixtures, or equipment of the migrant farm labor center, the replacement or repair of which are reasonably required to preserve the migrant farm labor center. Withdrawals from the reserve account shall be made only upon the written approval of the department of the amount and nature of expenditures.

(c) A migrant farm labor center governed by this chapter may be operated for an extended period beyond 180 days after approval by the department, provided that all of the following conditions are satisfied:

(1) No additional subsidies provided by the department are used for the operation or administration of the migrant farm center during the extended occupancy period except to the extent that state funds are appropriated or authorized for the purpose of funding all or part of the cost of subsidizing extended occupancy periods during the first 14 days only.

(2) Rents are not to be increased above the rents charged during the period immediately prior to the extended occupancy period unless the department finds that an increase is necessary to cover the difference between reasonable operating costs necessary to keep the center open during the extended occupancy period and the amount of state funds available pursuant to paragraph (1) and any contributions from agricultural employers or other federal, local, or private sources. These contributions shall not be used to reduce the amount of state funds that otherwise would be made available to the center to subsidize rents during an extended occupancy period.

(3) In no event shall the rent during the extended occupancy period exceed the average daily operating cost of the center, less any subsidy funds available pursuant to paragraph (1) or (2). Households representing at least 25 percent of the units in the center shall have indicated their desire and intention to remain in residency during an extended occupancy period by signing a petition to the local entity to keep the center open for an extended period at rents that are the same or higher than rents during the regular period of occupancy. Each household shall receive a clear bilingual notice describing the extended occupancy options attached to the lease.

The Legislature finds and declares that because the number of residents may be substantially reduced during the extended occupancy period, a rent increase may be necessary to cover operating costs. It is the intent of the Legislature that the public sector, private sector, and farmworkers should each play an important role in ensuring the financial viability of this important source of needed housing.

(4) An extended occupancy period is requested by an entity operating the migrant farm labor center and received by the department no earlier than 30 days and no later than 15 days prior to the center's scheduled closing date. The department shall notify the entity and petitioning residents of the final decision no later than seven days prior to the center's scheduled closing date. During the extended occupancy period, occupancy shall be limited to migrant farmworkers and their families who resided at a migrant center during the regular period of occupancy.

(5) Before approving or denying an extension and establishing the rents for the extended occupancy period, both of which shall be within the sole discretion of the department, the department shall take into consideration all of the following factors:

(A) The structural and physical condition of the center, including water and sewer pond capacity and the capacity and willingness of the local entity to operate the center during the extended occupancy period.

(B) Whether local approvals are required, and whether there are competing demands for the use of the center's facilities.

(C) Whether there is adequate documentation that there is a need for residents of the migrant center to continue work in the area, as confirmed by the local entity.

(D) The climate during the extended occupancy period.

(E) The amount of subsidy funds available that can be allocated to each center to subsidize rents below the operating costs and the cost of operating each center during the extended occupancy period.

(F) The extended occupancy period is deemed necessary for the health and safety of the migrant farmworkers and their families.

(G) Other relevant factors affecting the migrant farmworkers and their families and the operation of the centers.

(6) The rents collected during the extended occupancy period shall be remitted to the department. However, based on financial records to the satisfaction of the department, the department may reduce the amount to be remitted by an amount it determines the local entity has expended during the extended occupancy period that is not being reimbursed by department funds.

(7) The occupancy during the extended occupancy period represents a new tenancy and is not subject to existing and statutory and regulatory limitations governing rents. Prior to the beginning of the extended occupancy period, residents shall be provided at least two days' advance written notice of any rent increase and of the expected length of the extended occupancy period, including the scheduled date of closure of the center, and prior to being eligible for residency during the extended occupancy period, residents shall sign rental documents deemed necessary by the department.

(d) The Legislature finds and declares that variable annual climates and changing agricultural techniques create an inability to accurately predict the end of a harvest season for the purposes of

housing migrant farmworkers and their families. Because of these factors, in any part of this state, and in any specific year, one or more migrant farmworker housing centers governed by this chapter need to remain open for up to two additional weeks to allow the residents to provide critical assistance to growers in harvesting crops while also fulfilling work expectations that encouraged them to migrate to the areas of the centers. In addition, if the centers close prematurely, the migrant farmworkers often must remain in the areas to work for up to two weeks. During this time they will not be able to obtain decent, safe, and affordable housing and the health and safety of their families and the surrounding community will be threatened.

The Legislature therefore finds and declares that, for the purposes of any public or private right, obligation, or authorization related to the use of property and improvements thereon as a 180-day migrant center, an extended use of any housing center governed by this chapter pursuant to this section is deemed to be the same as the 180-day use generally authorized by this chapter.

SEC. 2. The sum of sixty thousand dollars ($60,000) is hereby appropriated from the General Fund to the Department of Housing and Community Development for the Office of Migrant Services for the purpose of funding during the 1999–2000 fiscal year the extended occupancy periods authorized by subdivision (c) of Section 50710.1 of the Health and Safety Code, as amended by Section 1 of this act. This appropriation shall be in addition to any sums allocated to the Office of Migrant Services in the Budget Act of 1999.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to overcome the delay of the 1999 agricultural season due to the 1998–99 winter freezes and the heavy rains in early 1999 and make funds available so that migrant farmworkers and their families will be able to obtain housing to complete the harvest before the end of the 1999 growing season, it is necessary for this act to take effect immediately.

CHAPTER 309

An act to amend Sections 661 and 1861.16 of the Insurance Code, relating to insurance.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 661 of the Insurance Code is amended to read:

661. (a) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(1) Nonpayment of premium.

(2) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(3) Discovery of fraud by the named insured in pursuing a claim under the policy provided the insurer does not rescind the policy.

(4) Discovery of material misrepresentation of any of the following information concerning the named insured or any resident of the same household who customarily operates an automobile insured under the policy:

(A) Safety record.

(B) Annual miles driven in prior years.

(C) Number of years of driving experience.

(D) Record of prior automobile insurance claims, if any.

(E) Any other factor found by the commissioner to have a substantial relationship to the risk of loss.

Any insured who negligently misrepresents information described in this paragraph may avoid cancellation by furnishing corrected information to the insurer within 20 days after receiving notice of cancellation and agreeing to pay any difference in premium for the policy period in which the information remained undisclosed.

(5) A substantial increase in the hazard insured against.

(b) This section shall not apply to any policy or coverage that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars ($100) shall not be deemed a cancellation of the coverage or of the policy.

(d) This section shall not apply to nonrenewal.

SEC. 2. Section 1861.16 of the Insurance Code is amended to read:

1861.16. (a) An insurer issuing a policy described in subdivision (a) of Section 660 by or through an insurance agent where a commission is paid, directly or indirectly, to that agent shall, when issuing a policy in the minimum financial responsibility coverage amount as required by Section 1861.15, pay a commission on the same terms and on the same percentage basis to that agent as for any higher amount of policy coverage sold by that agent. In no case shall the percentage amount of commission paid to that agent for a policy of minimum financial responsibility coverage be less than the

percentage commission paid to that agent on any higher level of policy coverage issued by that insurer.

(b) An agent or representative representing one or more insurers having common ownership or operating in California under common management or control shall offer, and the insurer shall sell, a good driver discount policy to a good driver from an insurer within that common ownership, management, or control group, which offers the lowest rates for that coverage. This requirement applies notwithstanding the underwriting guidelines of any of those insurers or the underwriting guidelines of the common ownership, management, or control group. Nothing in this subdivision shall require an insurer to offer and sell a good driver discount policy that the insurer would otherwise not be required to offer and sell in accordance with paragraph (3) of subdivision (b) of Section 1861.02. As used in this subdivision, "representative" means any person who offers or prepares premium quotations on behalf of either an insurer or any entity acting directly or indirectly on behalf of an insurer. This subdivision shall not be construed to either permit a representative to transact insurance, or to exempt a representative who does transact insurance from the licensing provisions of this code.

This subdivision shall become operative on January 1, 1991.

(c) An insurer that is required by this section or Section 1861.02 to offer and sell good driver discount policies to good drivers to whom it did not sell those policies prior to November 8, 1988, due to driving safety record or vehicle type may file and, upon the approval of the commissioner, implement an interim rating plan for those applicants until the rating plan required by subdivision (a) of Section 1861.02 is adopted, provided that the insurer has timely filed an automobile insurance rating plan in compliance with subdivision (a) of Section 1861.02, and that plan has not been approved. An insurer may file an interim plan prior to the operative date of subdivision (b).

The commissioner shall notify the public of any application by an insurer for an interim rating plan. The public notice shall meet the requirements of Section 1861.06. The application shall be deemed approved 60 days after public notice unless (1) a consumer or his or her representative requests a hearing within 45 days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing. If the commissioner grants a request for a hearing or determines on his or her own motion to hold a hearing on the application for an interim rating plan, but does not approve or disapprove the proposed interim rating plan within the later of 30 days from the date the commissioner grants a request or determines to hold the hearing or January 1, 1991, the interim rating plan may be used until the time that the commissioner issues a decision.

If an interim rate or proposed interim rate is greater than the rate ultimately approved, the insurer shall refund to its applicable

policyholders, in proportion to the amount of premium paid by each, the difference between the total amount earned and the amount to which the insurer is entitled under the rate ultimately approved, together with interest at the rate of 10 percent per year. In lieu of a refund, the insurer may provide a credit to the policyholder if the amount due is less than three dollars ($3).

(d) Nothing contained in subdivision (b) or (c) shall be construed to expand, limit, or modify the requirements of subdivision (b) of Section 1861.02.

(e) A violation of this section by any insurer shall subject it to the penalties provided by Section 1861.14.

SEC. 3. The Legislature finds and declares that Section 2 of this act furthers the purpose of Proposition 103 by clarifying the persons required to provide good driver coverage required under Proposition 103.

CHAPTER 310

An act to amend Sections 18672, 18680, 18710, 18939, 19063, 19063.1, 19063.2, 19063.5, 19063.8, 19144, 19253.5, 19401, 19402, 19403, 19405, 19406, and 19585 of, to add Section 21419.5 to, and to repeal Section 19404 of, the Government Code, relating to state employees.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 18672 of the Government Code is amended to read:

18672. (a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for production of documents at any reasonable time and place. However, a subpoena shall not be issued to compel attendance of any witness who does not reside within 100 miles of the place where the hearing or investigation is held unless it is shown to the satisfaction of a member of the board, the executive officer, or the person authorized to conduct the investigation or hearing, by affidavit stating the facts, that the witness is a material witness. Such a statewide subpoena shall be served at least five days prior to the date of hearing.

(b) Subpoenas and subpoenas duces tecum shall be issued by the board or its authorized representative at the request of a party.

(c) The process extends to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. A subpoena or subpoena duces tecum may also be delivered by certified mail return receipt requested or by messenger. Service by messenger shall be effected when the witness

acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to date of birth and driver's license number or Department of Motor Vehicles identification number, or the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena issued and acknowledged pursuant to this section has the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state. A party requesting a continuance based upon the failure of a witness to appear at the time and place required for the appearance or testimony pursuant to a subpoena, shall prove that the party has complied with this section. The continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law.

(d) No witness is obliged to attend unless the witness is a resident of the state at the time of service.

(e) The custodian of documents that are the subject of a subpoena duces tecum may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying, together with an affidavit in compliance with Section 1561 of the Evidence Code.

SEC. 2. Section 18680 of the Government Code is amended to read:

18680. The remedy provided in Sections 11186 to 11188 inclusive is cumulative, and does not impair or interfere with either the power of the board or its authorized representative to conduct the hearing or investigation to enforce the attendance of witnesses and the production of books or papers or the power of any party to seek court enforcement of a subpoena issued by the board or its authorized representative.

SEC. 3. Section 18710 of the Government Code is amended to read:

18710. All orders and decisions of the board made pursuant to Article VII of the California Constitution or this part shall be obeyed by and are binding upon all parties to a proceeding before it, including, but not limited to, appointing powers and all their employees, including their personnel officers, regardless of whether an appointing power or other party agrees or disagrees with a decision or order of the board.

All orders and decisions, other than orders or decisions of the board itself, shall be reviewed by the executive officer or an employee of the board designated by the executive officer.

If any appointing power or other party refuses or neglects to comply with any such order or decision, the board may , in its sole discretion, after investigation with or without a hearing, do any of the following:

(a) Issue further findings interpreting or clarifying the order or decision.

(b) Issue further findings as to whether an appointing power or other party has or has not complied with the order or decision.

(c) Issue an order to show cause, directed to the appointing power, why the board should not file a petition for a writ of mandate to compel the appointing power to comply with the order or decision.

If the board finds that no good cause exists for the refusal or neglect of the appointing power or other party to comply with the order or decision, the board may issue a further order or decision consistent with its findings. Alternatively, the board may file a petition for a writ of mandate in the manner and in the court provided for by law to compel the appointing power or other party to comply with the order or decision.

This procedure for the enforcement of the orders and decisions of the board is in addition to any other means or procedure which may be provided by law. Nothing in this section shall preclude a party to a proceeding before the board from seeking judicial enforcement of an order or decision of the board.

SEC. 4. Section 18939 of the Government Code is amended to read:

18939. For classes of positions for which the board or a designated appointing power finds it difficult to maintain adequate eligible lists it may receive applications, conduct examinations, and create eligible lists continuously. The names of eligibles who took the same or a comparable examination on different dates may be ranked for purposes of certification in the order of final earned ratings, except as the order may be modified by the application of veterans preferences or career credits, consistent with applicable statutes. Eligibility from a continuous examination may be deemed to be established as of the date of examination.

SEC. 5. Section 19063 of the Government Code is amended to read:

19063. (a) Any person receiving state public assistance under the CalWORKs program (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code) who meets the minimum qualifications for any civil service position described by the State Personnel Board as a seasonal or an entry level nontesting class that does not require an examination shall be given priority consideration. ''Priority consideration'' means, for the purposes of this article, that after consideration has been made for all conditions described in this section, the state agency involved shall hire all qualified job applicants who are receiving state public assistance before hiring any other applicant. The board shall review all nontesting classes and determine those that are subject to this article.

(b) Public assistance recipients who apply for openings under this article shall be required to undergo the same employment process

used by state agencies to select any other person for appointment to a position in such a class. If a state agency does not select a public assistance recipient to fill an opening, it shall document in its employment records the reasons why the public assistance recipient was not selected and any other information determined to be necessary by the board.

(c) The employment of public assistance recipients shall be consistent with the goals established by each agency under Section 19790.

(d) This section shall not preclude a state agency from hiring any person appointed during the prior 12 months in the class for which the vacancy exists.

SEC. 6. Section 19063.1 of the Government Code is amended to read:

19063.1. Each state agency that intends to establish qualified hiring pools, as defined by the State Personnel Board, for seasonal or entry level nontesting class employment shall notify the Employment Development Department or its delegate in the area where the openings are expected to occur at least 45 calender days prior to the establishment of the pool. The state agency shall request referrals of public assistance recipients and at the same time shall provide necessary job-related information.

SEC. 7. Section 19063.2 of the Government Code is amended to read:

19063.2. Each state agency that has an open seasonal or entry level nontesting class position, but does not have a qualified hiring pool, shall notify the Employment Development Department or its delegate in the area where the job is located of the opening no later than five working days after the vacancy occurs. The state agency shall request referrals of public assistance recipients and at the same time shall provide necessary job-related information. The agency shall provide a reasonable period for referrals, but not less than 10 working days.

SEC. 8. Section 19063.5 of the Government Code is amended to read:

19063.5. Notwithstanding any other provision of law, participation in a seasonal or entry level nontesting class vacancy by a public assistance recipient shall be voluntary only, and in no event shall any person be subject to sanctions, through loss of benefits or eligibility, for not applying for, accepting, or continuing in such a position. All notices shall explain the voluntary nature of the application to work in a seasonal or entry level nontesting class opening, the job requirements, the amount of pay, and the job qualifications. All notices, shall also inform public assistance recipients that they will have priority in being hired for jobs in these openings as provided in Section 19063.

SEC. 9. Section 19063.8 of the Government Code is amended to read:

19063.8. Any seasonal or entry level nontesting classifications specifically designed to support a program to train students, as determined by the board, to the extent that they are authorized as of the effective date of this article, shall be exempt from this article. However, state agencies shall be encouraged by the board to increase their efforts to recruit disadvantaged youth or students for these jobs.

SEC. 10. Section 19144 of the Government Code is amended to read:

19144. Subject to Sections 21223 and 21224, a person who has retired from state civil service may be employed temporarily in a civil service position at any time following retirement, provided that the position is either:

(a) In the class in which the person had permanent or probationary status or a career executive assignment appointment at the time of retirement.

(b) In another class to which the person could have been permanently transferred, reinstated, or demoted at the time of retirement.

SEC. 11. Section 19253.5 of the Government Code is amended to read:

19253.5. (a) In accordance with board rule, the appointing power may require an employee to submit to a medical examination by a physician or physicians designated by the appointing power to evaluate the capacity of the employee to perform the work of his or her position.

(b) Fees for the examination and for the services of medical specialists or technicians, if necessary, shall be paid by the state agency. The employee may submit medical or other evidence to the examining physician or to the appointing power. The examining physician shall make a written report of the examination to the appointing power. The appointing power shall provide a copy to the physician designated by the employee.

(c) When the appointing power, after considering the conclusions of the medical examination and other pertinent information, concludes that the employee is unable to perform the work of his or her present position, but is able to perform the work of another position including one of less than full time, the appointing power may demote or transfer the employee to such a position.

Except as authorized by the Department of Personnel Administration under Section 19837, the employee demoted or transferred pursuant to this section shall receive the maximum of the salary range of the class to which he or she is demoted or transferred, provided that the salary is not greater than the salary he or she received at the time of his or her demotion or transfer.

(d) When the appointing power after considering the conclusions of the medical examination provided for by this section or medical reports from the employee's physician, and other pertinent information, concludes that the employee is unable to perform the

work of his or her present position, or any other position in the agency, and the employee is not eligible or waives the right to retire for disability and elects to withdraw his or her retirement contributions or to permit his or her contributions to remain in the retirement fund with rights to service retirement, the appointing power may terminate the appointment of the employee.

(e) The appointing power may demote, transfer, or terminate an employee under this section without requiring the employee to submit to a medical examination when the appointing power relies upon a written statement submitted to the appointing power by the employee as to the employee's condition or upon medical reports submitted to the appointing power by the employee.

(f) The employee shall be given written notice of any demotion, transfer, or termination under this section at least 15 days prior to the effective date thereof. No later than 15 days after service of the notice, the employee may appeal the action of the appointing power to the board. The board, in accordance with its rules, shall hold a hearing. The board may sustain, disapprove, or modify the demotion, transfer, or termination.

(g) Whenever the board revokes or modifies a demotion, transfer, or termination, the board shall direct the payment of salary to the employee calculated on the same basis and using the same standards as provided in Section 19584.

(h) Upon the request of an appointing authority or the petition of the employee who was terminated, demoted, or transferred in accordance with this section, the employee shall be reinstated to an appropriate vacant position in the same class, in a comparable class or in a lower related class if it is determined by the board that the employee is no longer incapacitated for duty. Such a reinstatement to a position in a different agency may be made only with the concurrence of that agency. In approving or ordering the reinstatements, the board may require the satisfactory completion of a new probationary period. When the board finds the employee who was terminated, demoted, or transferred is no longer incapacitated for duty but there is no vacant position to which the employee appropriately can be appointed, the name of the employee shall be placed upon those reemployment lists that are determined to be appropriate by the board.

(i) (1) If the appointing power, after considering the conclusions of the medical examination provided for by this section or medical reports from the employee's physician and other pertinent information, concludes that the employee is unable to perform the work of his or her present position or any other position in the agency and the employee is eligible and does not waive the right to retire for disability, the appointing power shall file an application for disability retirement on the employee's behalf. The appointing power shall give the employee 15 days written notice of its intention to file such an application and a reasonable opportunity to respond to the

appointing power prior to the appointing power's filing of the application. However, the appointing power's decision to file the application is final and is not appealable to the State Personnel Board.

(2) Notwithstanding Section 21153, upon filing the application for disability retirement, the appointing power may remove the employee from the job and place the employee on involuntary leave status. The employee may use any accrued leave eligible during the period of the involuntary leave. If the employee's leave credits and programs are exhausted or if they do not provide benefits at least equal to the estimated retirement allowance, the appointing power shall pay the employee an additional temporary disability allowance so that the employee receives payment equal to the retirement allowance. The appointing power shall continue to make all employer contributions to the employee's health plans during the period of the involuntary leave.

(3) If the application for disability retirement is subsequently granted, the retirement system shall reimburse the appointing power for the temporary disability allowance which shall be deducted from any back disability retirement benefits otherwise payable to the employee. If the application is denied, the appointing power shall reinstate the employee to his or her position with back salary and benefits pursuant to subdivision (g), less any temporary disability allowance paid by the appointing power. The appointing power shall also restore any leave credits the employee used during the period of the involuntary leave.

SEC. 12. Section 19401 of the Government Code is amended to read:

19401. All departments and agencies of state government shall establish an effective program of upward mobility for employees in low paying occupational groups, as defined by the State Personnel Board. In developing their upward mobility programs, departments and agencies shall endeavor to provide, to the greatest extent possible, the following opportunities for employees who meet criteria established by the department or agency, demonstrate the aptitude or potential for advancement, and wish to participate in:

(a) Career counseling utilizing individual professional, administrative, and technical employees who can serve as career models, and a course in group career counseling. Each employee who wishes to participate in an upward mobility program should be required to develop a career development plan.

(b) Appropriate academic counseling.

(c) Training opportunities such as college programs related to special training programs. This training may include release time at reduced cost or no cost to the employee and may be offered in geographically remote areas through cooperative arrangements with other departments and colleges.

(d) Training and development assignments.

(e) On-the-job training.

(f) Job restructuring, including the development of career ladders and lattices, and modifications of requirements where employment barriers exist.

SEC. 13. Section 19402 of the Government Code is amended to read:

19402. All upward mobility programs shall include annual goals that include the number of employees expected to progress from positions in low paying occupational groups to entry-level technical, professional, and administrative positions, and the timeframe within which this progress shall occur. The State Personnel Board shall be responsible for approving each department's annual upward mobility goals and timetables.

Any department or agency of state government that determines that it will be unable to achieve the goals may request the board for a reduction in the goals. If the board determines that the department or agency has not made a good faith effort to achieve the goals, the board shall hold public hearings to determine the reasons for the deficiencies and to establish a program to overcome these deficiencies.

SEC. 14. Section 19403 of the Government Code is amended to read:

19403. The State Personnel Board shall, in cooperation with departments, establish bridging classifications and career ladders to provide upward mobility from jobs in low paying occupations to technical, professional, and administrative jobs on an ongoing basis.

SEC. 15. Section 19404 of the Government Code is repealed.

SEC. 16. Section 19405 of the Government Code is amended to read:

19405. The State Personnel Board shall annually submit a report to the Legislature on the performance of each department and agency in state government in meeting its obligations under this article.

SEC. 17. Section 19406 of the Government Code is amended to read:

19406. The State Personnel Board shall prepare written guidelines for implementation of the upward mobility program described in this article within six months from the effective date of this article. The board shall involve representatives from a cross section of groups and organizations representing state employees, including target groups, both in the initial discussion and in the subsequent preparation of the guidelines.

SEC. 18. Section 19585 of the Government Code is amended to read:

19585. (a) This section shall apply to permanent and probationary employees and may be used in lieu of adverse action and rejection during probation when the only cause for action against an employee is his or her failure to meet a requirement for continuing employment, as provided in this section. This section shall not apply

to cases subject to the provisions of termination or demotion for medical reasons or retirement for disability.

(b) An appointing power may terminate, demote, or transfer an employee who fails to meet the requirement for continuing employment that is prescribed by the board on or after January 1, 1986, in the specification for the classification to which the employee is appointed. Notwithstanding the foregoing, as prescribed by Article 11 (commencing with Section 19991) of Chapter 1 of Part 2.6, the appointing power may grant the employee a leave of absence in lieu of one of the actions specified above. In prescribing requirements for continuing employment, the board may specify standards to ensure that the requirements are consistently applied. The board may also specify when separation from a position for failure to meet requirements for continuing employment also constitutes separation from former positions that the employee held in other classifications that have the same or greater requirements for continuing employment.

(c) The federal Immigration Reform and Control Act of 1986 requires termination of an employee for failure to meet the employment eligibility requirements of that act, and if this is the only cause for action against that employee, the termination shall be carried out pursuant to this section. If a person fails to meet the employment eligibility requirements of the federal Immigration Reform and Control Act of 1986, that information, when used under this section, except for purposes of the appeals process, shall be confidential, as provided in the federal Immigration Reform and Control Act of 1986.

(d) For the purposes of this section, requirements for continuing employment shall be limited to the acquisition or retention of specified licenses, certificates, registrations, or other professional qualifications, education, or eligibility for continuing employment or advancement to the fully qualified level within a particular class series. The board shall prescribe procedures to ensure that employees affected by the requirements are informed of them. Requirements for continuing employment that are established for the purposes of this section shall not include medical, physical ability, work, or academy performance standards.

(e) For the purposes of this section, an employee who has filed a proper and timely application for renewal of a required license, registration, or certificate shall be considered as having maintained the license, registration, or certificate unless it is subsequently denied, revoked, or suspended.

(f) The employee shall receive at least five days' written notice of termination, demotion, or transfer and shall have the right to appeal the action to the board.

(g) When the requirements for continuing employment have been regained, terminated, demoted, or transferred employees may be reinstated pursuant to Section 19140.

(h) Any action under this section shall be considered nondisciplinary for the purposes of the State Civil Service Act and board rules.

(i) Whenever the board revokes or modifies a termination, demotion, or transfer under this section, the board shall direct the payment of salary and benefits to the employee calculated on the same basis and using the same standards as provided in Section 19584.

SEC. 19. Section 21419.5 is added to the Government Code, to read:

21419.5. The system shall deduct the amount of interim disability allowance made to a state member pursuant to subdivision (i) of Section 19253.5 from the member's retroactive disability allowance, and reimburse the state agency that has made the interim disability allowance payments. If the retirement disability allowance is not sufficient to reimburse the total interim disability allowance payments, an amount no greater than 10 percent of the member's monthly disability allowance shall be deducted and reimbursed to the state agency until the total interim disability allowance payments have been repaid. The state member and this system may agree to any other arrangements or schedule for the member to repay the interim disability allowance payments. If the disability application is denied, the system shall not be responsible for reimbursing the amount of interim disability allowance paid to the member by the state agency.

CHAPTER 311

An act to amend Section 56.17 of the Civil Code, to amend Section 12926 of the Government Code, to amend Section 1374.7 of the Health and Safety Code, and to amend Sections 10123.3 and 10147 of the Insurance Code, relating to genetic characteristics.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 56.17 of the Civil Code is amended to read:

56.17. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a health care service plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as

determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Corporations necessary to administer

and enforce compliance with Section 1374.7 of the Health and Safety Code.

(i) For purposes of this section, "genetic characteristic" has the same meaning as that set forth in subdivision (d) of Section 1374.7 of the Health and Safety Code.

SEC. 2. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) "Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision thereof, and cities, except as follows:

(1) "Employer" does not include a religious association or corporation not organized for private profit.

(2) "Employer," for purposes of provisions defining unlawful employment practices related to mental disability, means any person regularly employing 15 or more persons, or any person directly or indirectly acting as an agent of such an employer, and also includes the state and municipalities and political subdivisions of the state.

(e) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(f) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) "Medical condition" includes either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) "Mental disability" includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. However, "mental disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a mental disability.

(j) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race,

religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

(k) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits an individual's ability to participate in major life activities.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Being regarded as having or having had a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2).

(4) Being regarded as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

It is the intent of the Legislature that the definition of "physical disability" in this subdivision shall have the same meaning as the term "physical handicap" formerly defined by this subdivision and construed in American National Ins. Co. v. Fair Employment & Housing Com., 32 Cal.3d 603. However, "physical disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a physical disability.

(*l*) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) "Reasonable accommodation" may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations,

training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(n) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(o) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(p) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) the nature and cost of the accommodation needed, (2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility, (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities, (4) the type of operations, including the composition, structure, and functions of the work force of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 3. Section 1374.7 of the Health and Safety Code is amended to read:

1374.7. (a) No plan shall refuse to enroll any person or accept any person as a subscriber or renew any person as a subscriber after appropriate application on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring. No plan shall require a higher rate or charge, or offer or provide different terms, conditions, or benefits, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(b) No plan shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(c) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) "Genetic characteristics" as used in this section means either of the following:

(1) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased

risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(2) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

SEC. 4. Section 10123.3 of the Insurance Code is amended to read:

10123.3. (a) No self-insured employee welfare benefit plan shall refuse to enroll any person or accept any person as a subscriber or renew any person as a subscriber after appropriate application on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring. No plan shall require a higher rate or charge, or offer or provide different terms, conditions, or benefits, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring than is at the time required of any other individual in an otherwise identical classification, nor shall any plan make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the plan because the person carries those traits.

(b) No self-insured employee welfare benefit plan shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(c) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) "Genetic characteristics" as used in this section means either of the following:

(1) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(2) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

SEC. 5. Section 10147 of the Insurance Code is amended to read:

10147. As used in this article:

(a) "Disability income insurance" means insurance against loss of occupational earning capacity arising from injury, sickness, or disablement, and includes insurance which provides benefits for overhead expenses of a business or profession when the insured becomes disabled.

(b) "Genetic characteristics" means any scientifically or medically identifiable gene or chromosome, or alteration thereof, that is known to be a cause of a disease or disorder, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(c) "Life or disability income insurer" means an insurer licensed to transact life insurance or disability income insurance in this state or a fraternal benefit society licensed in this state.

(d) "Policy" means (1) a life insurance policy or a disability income insurance policy delivered in this state, or (2) a certificate of life insurance benefits or disability income insurance benefits, issued under a group life or disability income insurance policy and delivered in this state by a life or disability income insurer or a fraternal benefits society, regardless of the location of the group master policy.

(e) "Test of a person's genetic characteristics" means a laboratory test which is generally accepted in the scientific and medical communities for the determination of the presence or absence of genetic characteristics.

CHAPTER 312

An act to amend Section 48205 of the Education Code, to amend Sections 9, 2150, 2187, 6042, 6160, 6180, 6341, 6342, 6521, 6522, 6723, 6724, 6951, 6953, 6954, 8150, 9105, 9203, 9204, 13107, and 13112 of, and to add Sections 7772.1, 9085, 9237.5, and 13300.5 to, the Elections Code, and to amend Sections 1780 and 6254.4 of, and to add Section 88002.5 to, the Government Code, relating to elections.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. 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.

(8) For the purpose of serving as a member of a precinct board for an election pursuant to Section 12302 of the Elections Code.

(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. 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. 2. Section 9 of the Elections Code is amended to read:

9. (a) Counting of words, for purposes of this code, shall be as follows:

(1) Punctuation is not counted.

(2) Each word shall be counted as one word except as specified in this section.

(3) All geographical names shall be considered as one word; for example, "City and County of San Francisco" shall be counted as one word.

(4) Each abbreviation for a word, phrase, or expression shall be counted as one word.

(5) Hyphenated words that appear in any generally available standard reference dictionary, published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted, shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate word.

(6) Dates consisting of a combination of words and digits shall be counted as two words. Dates consisting only of a combination of digits shall be counted as one word.

(7) Any number consisting of a digit or digits shall be considered as one word. Any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one word whereas "one hundred" shall be counted as two words. "100" shall be counted as one word.

(8) Telephone numbers shall be counted as one word.

(9) Internet web site addresses shall be counted as one word.

(b) This section shall not apply to counting words for ballot designations under Section 13107.

SEC. 3. Section 2150 of the Elections Code is amended to read:

2150. (a) The affidavit of registration shall show:

(1) The facts necessary to establish the affiant as an elector.

(2) The affiant's name at length, including his or her given name, and a middle name or initial, or if the initial of the given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at affiant's option, by the designation of Miss, Ms., Mrs., or Mr. No person shall be denied the right to register because of his or her failure to mark a prefix to the given name and shall be so advised on the voter registration card. This subdivision shall not be construed as requiring the printing of prefixes on an affidavit of registration.

(3) The affiant's place of residence, and residence telephone number, if furnished. No person shall be denied the right to register because of his or her failure to furnish a telephone number, and shall be so advised on the voter registration card.

(4) The affiant's mailing address, if different from the place of residence.

(5) The affiant's date of birth to establish that he or she will be at least 18 years of age on or before the date of the next election.

(6) The state or country of the affiant's birth.

(7) The affiant's California driver's license number, California identification card number, or other identification number as specified by the Secretary of State. No person shall be denied the right to register because of his or her failure to furnish one of these numbers, and shall be so advised on the voter registration card.

(8) The affiant's political party affiliation.

(9) That the affiant is currently not imprisoned or on parole for the conviction of a felony.

(10) A prior registration portion indicating whether the affiant has been registered at another address, under another name, or as intending to affiliate with another party. If the affiant has been so registered, he or she shall give an additional statement giving that address, name, or party.

(b) The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and the date of signing. If the affiant is unable to write he or she shall sign with a mark or cross.

(c) If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant.

SEC. 4. Section 2187 of the Elections Code is amended to read:

2187. (a) Each county elections official shall send to the Secretary of State, in a format described by the Secretary of State, a summary statement of the number of voters in the county. The statement shall show the total number of voters in the county, the number registered as affiliated with each qualified political party, the number registered in nonqualified parties, and the number who declined to state any party affiliation. The statement shall also show the number of voters, by political affiliations, in each city, supervisorial district, Assembly district, Senate district, and congressional district, located in whole or in part within the county.

(b) The Secretary of State, on the basis of the statements sent by the county elections officials and within 30 days after receiving those statements, shall compile a statewide list showing the number of voters, by party affiliations, in the state and in each county, city, supervisorial district, Assembly district, Senate district, and congressional district, in the state. A copy of this list shall be made available, upon request, to any elector in this state.

(c) Each county that uses data processing equipment to store the information set forth in the affidavit of registration shall send to the Secretary of State one copy of the magnetic tape file with the information requested by the Secretary of State. Each county that does not use data processing storage shall send to the Secretary of State one copy of the index setting forth that information.

(d) The summary statements and the magnetic tape file copy or the index shall be sent at the following times:

(1) On the 135th day before each presidential primary and before each direct primary, with respect to voters registered on the 154th day before the primary election.

(2) Not less than 50 days prior to the primary election, with respect to voters registered on the 60th day before the primary election.

(3) Not less than 10 days prior to the primary election, with respect to voters registered before the 28th day prior to the primary election.

(4) Not less than 50 days prior to the general election, with respect to voters registered on the 60th day before the general election.

(5) Not less than 10 days prior to the general election, with respect to voters registered before the 28th day prior to the general election.

(6) On or before March 1 of each odd-numbered year, with respect to voters registered as of February 10.

(7) On or before October 1 of each odd-numbered year, with respect to voters registered as of September 12.

(e) The Secretary of State may adopt regulations prescribing the content and format of the magnetic tape file or index referred to in subdivision (c) and containing the registered voter information from the affidavits of registration.

(f) The Secretary of State may adopt regulations prescribing additional regular reporting times, except that the total number of reporting times in any one calendar year shall not exceed 12.

(g) The Secretary of State shall make the information from the magnetic tape files or the printed indexes available, under conditions prescribed by the Secretary of State, to any candidate for federal, state, or local office, to any committee for or against any proposed ballot measure, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly or political research, or governmental purposes as determined by the Secretary of State.

SEC. 5. Section 6042 of the Elections Code is amended to read:

6042. When the Secretary of State decides to place the name of a candidate on the ballot pursuant to Section 6041, he or she shall notify the candidate that the candidate's name will appear on the ballot of this state in the presidential primary election.

The secretary shall also notify the candidate that the candidate may withdraw his or her name from the list of recognized candidates by filing with the Secretary of State an affidavit pursuant to Section 6043 no later than the 68th day before the presidential primary election.

SEC. 6. Section 6160 of the Elections Code is amended to read:

6160. At least 68 days before a presidential primary, the Secretary of State shall notify each steering committee whether or not it has qualified a candidate or uncommitted delegation for placement on the ballot pursuant to Section 6060.

SEC. 7. Section 6180 of the Elections Code is amended to read:

6180. At least 68 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. 8. Section 6341 of the Elections Code is amended to read:

6341. When the Secretary of State decides to place the name of a candidate on the ballot pursuant to Section 6340, he or she shall notify the candidate that his or her name will appear on the ballot of this state in the presidential primary election.

The secretary shall also notify the candidate that he or she may withdraw his or her name from the ballot by filing with the Secretary of State an affidavit pursuant to Section 6342 no later than the 68th day before that election.

SEC. 9. Section 6342 of the Elections Code is amended to read:

6342. If a selected candidate or a nonselected candidate files with the Secretary of State, no later than the 68th day before the presidential primary, an affidavit stating without qualification that he or she is not now a candidate for the office of President of the United States at the forthcoming presidential primary election, his or her name shall be omitted from the list of names certified by the Secretary of State to the county elections officials for the ballot and his or her name shall not appear on the presidential primary ballot.

SEC. 10. Section 6521 of the Elections Code is amended to read:

6521. When the Secretary of State decides to place the name of a candidate on the ballot pursuant to Section 6520, he or she shall notify the candidate that his or her name will appear on the ballot of this state in the presidential primary.

The Secretary of State shall also notify the candidate that he or she may withdraw his or her name from the ballot by filing with the Secretary of State an affidavit pursuant to Section 6522, no later than the 68th day before that election.

SEC. 11. Section 6522 of the Elections Code is amended to read:

6522. If a selected candidate or an unselected candidate files with the Secretary of State, no later than the 68th day before the presidential primary, an affidavit stating without qualification that he or she is not now a candidate for the office of President of the United States at the forthcoming presidential primary election, his or her name shall be omitted from the list of names certified by the Secretary of State to the county elections officials for the ballot and his or her name shall not appear on the presidential preference portion of the primary ballot.

SEC. 12. Section 6723 of the Elections Code is amended to read:

6723. When the Secretary of State decides to place the name of a candidate on the ballot pursuant to Sections 6720 and 6722, the Secretary of State shall notify the candidate that her or his name will appear on the Peace and Freedom Party presidential preference primary ballot of this state, but that a committee must be formed, delegates certified, and a petition filed pursuant to this chapter in order to have her or his name appear on the delegate selection portion of the presidential primary ballot.

The Secretary of State shall also notify the candidate that she or he may withdraw her or his name from the ballot by filing with the Secretary of State an affidavit pursuant to Section 6724, no later than the 68th day before that election.

SEC. 13. Section 6724 of the Elections Code is amended to read:

6724. If a selected candidate or an unselected candidate files with the Secretary of State, no later than the 68th day before the presidential primary, an affidavit stating without qualification that she or he is not a candidate for the office of President of the United States at the forthcoming presidential primary election, the name of that candidate shall be omitted from the list of names certified by the Secretary of State to the elections official for the ballot and the name of that candidate shall not appear on the presidential preference portion of the primary ballot.

SEC. 14. Section 6951 of the Elections Code is amended to read:

6951. At least 68 days before the presidential primary, the Secretary of State shall transmit to each elections official a certified list containing the names of the candidates to appear on the Peace and Freedom Party presidential preference primary ballot and the names and addresses of the candidates for delegates for whom

nomination papers have been filed and who are entitled to be voted for at the presidential primary.

SEC. 15. Section 6953 of the Elections Code is amended to read:

6953. At least 68 days before a presidential primary, the Secretary of State shall transmit to each elections official a certified list containing the names and addresses of the candidates for delegates for whom nomination papers have been filed and who are entitled to be voted for at the presidential primary.

The certified list shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES FOR DELEGATE
SECRETARY OF STATE

To the Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that the following list contains the name and post office address of each person for whom nomination papers have been filed in my office and who is entitled to be voted for at the presidential primary to be held on the _____ day of _____, 20____, as delegate to the next national convention of the American Independent Party; I further certify that in the list, under the name of the person for whom a preference as nominee of the American Independent Party for President has been expressed, or under the name of the chairman of a group not expressing a preference, there is stated the name of each candidate for delegate who has filed a statement pursuant to Section 6567, and who may be voted for as one of a group.

LIST OF CANDIDATES
American Independent Party

Candidates preferring _____	Candidates preferring _____	No preference (Name of chairman) _____
Name Address Top of group	Name Address Top of group	Name Address Top of group
1._____	1._____	1._____
2._____	2._____	2._____
3._____	3._____	3._____
etc.	etc.	etc.

Dated at Sacramento, California, this _____ day of _____, 20____.

_____

(SEAL) (Secretary of State)

SEC. 16. Section 6954 of the Elections Code is amended to read:

6954. At least 68 days before a presidential primary, the Secretary of State shall transmit to each county elections official a certified list containing the names and addresses of the candidates for whom nomination papers have been filed and who are entitled to be voted for at the presidential primary.

The certified list shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES SECRETARY OF STATE

To the County Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that the following list contains the name and post office address of each person for whom nomination papers have been filed in my office and who is entitled to be voted for at the presidential primary to be held on the _____ day of _____, 20____, as nominee of the Republican Party.

List of Candidates
Republican Party

	Name	Address
1	_____	_____
2	_____	_____
3	_____	_____
etc.		etc.

Dated at Sacramento, California, this _____ day of _____, 20____.

_____

(SEAL) Secretary of State

SEC. 17. Section 7772.1 is added to the Elections Code, to read:

7772.1. Notwithstanding any other provision of law, if the elections official, on the 73rd day prior to the direct primary election, finds that the number of candidates nominated for election to a central committee from any election jurisdiction does not exceed the number to be elected from that jurisdiction, the designation of the office and the names of the candidates shall not be printed on this

party's ballot in that jurisdiction, unless there is filed with the elections official, not later than 20 days after the final date for filing nomination papers for the positions, a petition signed by 25 registered voters affiliated with the Peace and Freedom Party indicating that a write-in campaign will be conducted for the office. In lieu thereof, the board of supervisors shall declare elected the candidates who have been nominated, and those candidates shall be entitled to receive certificates of election in the same manner as other candidates elected to a central committee.

SEC. 18. Section 8150 of the Elections Code is amended to read:

8150. The certificate of the Secretary of State showing candidates nominated or selected at a primary election, and justices of the Supreme Court and courts of appeal to appear on the general elections ballot, shall be substantially in the following form:

CERTIFICATE OF SECRETARY OF STATE SHOWING
CANDIDATES NOMINATED OR SELECTED
AT PRIMARY ELECTION

SECRETARY OF STATE

To the County Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that below are stated the names of those persons entitled to receive votes within your county at the general election who have (1) received partisan nominations or have been selected as candidates for office at the primary election or (2) in the case of justices of the Supreme Court or the courts of appeal, are the justices who are subject to confirmation by the voters at the general election. These nominations and selections are evidenced by the compilation and statement required to be made by me and filed in my office. Set forth along with their respective names, other than the names of justices of the Supreme Court or the courts of appeal, there is shown the candidate's designation of his or her office, profession, vocation or occupation, and there is also shown separately and respectively for each nominee the name of the political party or organization, if any, that has nominated him or her and the designation of the public office for which he or she is so nominated.

STATE (AND DISTRICT) OFFICES

(Name of candidate)	(Candidate's designation of office, occupation, etc.)	(Party)	(Office)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ District

CONGRESSIONAL OFFICES

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ District

LEGISLATIVE OFFICES

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ District

SUPERINTENDENT OF PUBLIC INSTRUCTION

_____	_____	_____
_____	_____	_____
_____	_____	_____

I also certify that at the state conventions that met, according to law, at the State Capitol on the _____ day of _____, 20____, the following persons were nominated as electors of President and Vice President of the United States, for the parties respectively hereinafter placed at the head of the column containing their respective names, and you are hereby directed to print the names of the candidates for President and Vice President for whom those electors have pledged themselves to vote, upon the official ballots to be used at the general election, as representing the candidates of their respective parties for that office.

PRESIDENTIAL ELECTORS

_____ Party	_____ Party
_____ President	_____ President
_____ Vice President	_____ Vice President
1 _____	1 _____
2 _____	2 _____
3 _____	3 _____
etc.	etc.

Dated at Sacramento, California, this _____ day of _____, 20____.

_____

(SEAL) Secretary of State

SEC. 19. Section 9085 is added to the Elections Code, to read:

9085. (a) The ballot pamphlet shall also contain a section, located near the front of the pamphlet, that provides a concise summary of the general meaning and effect of "yes" and "no" votes on each state measure.

(b) The summary statements required by this section shall be prepared by the Legislative Analyst. These statements are not intended to provide comprehensive information on each measure. The Legislative Analyst shall be solely responsible for determining the contents of these statements. The statements shall be available for public examination and amendment pursuant to Section 9092.

SEC. 20. Section 9105 of the Elections Code is amended to read:

9105. (a) The county elections official shall immediately transmit a copy of any proposed measure to the county counsel. Within 15 days after the proposed measure is filed, the county counsel shall provide and return to the county elections official a ballot title and summary for the proposed measure. The ballot title may differ from any other title of the proposed measure and shall express in 500 words or less the purpose of the proposed measure. In providing the ballot title, the county counsel shall give a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.

(b) The county elections official shall furnish a copy of the ballot title and summary to the proponents of the proposed measure. The proponents shall, prior to the circulation of the petition, publish the Notice of Intention, and the ballot title and summary of the proposed measure in a newspaper of general circulation published in that county, and file proof of publication with the county elections official.

(c) The ballot title and summary prepared by the county counsel shall appear upon each section of the petition, above the text of the proposed measure and across the top of each page of the petition on

which signatures are to appear, in roman boldface type not smaller than 12 point. The ballot title and summary shall be clearly separated from the text of the measure. The text of the measure shall be printed in type not smaller than 8 point.

The heading of the proposed measure shall be in substantially the following form:

Initiative Measure to be Submitted Directly to the Voters

The county counsel has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the county counsel. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

SEC. 21. Section 9203 of the Elections Code is amended to read:

9203. (a) Any person who is interested in any proposed measure shall file a copy of the proposed measure with the elections official with a request that a ballot title and summary be prepared. This request shall be accompanied by the address of the person proposing the measure. The elections official shall immediately transmit a copy of the proposed measure to the city attorney. Within 15 days after the proposed measure is filed, the city attorney shall provide and return to the city elections official a ballot title for and summary of the proposed measure. The ballot title may differ from any other title of the proposed measure and shall express in 500 words or less the purpose of the proposed measure. In providing the ballot title, the city attorney shall give a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.

(b) The elections official shall furnish a copy of the ballot title and summary to the person filing the proposed measure. The person proposing the measure shall, prior to its circulation, place upon each section of the petition, above the text of the proposed measure and across the top of each page of the petition on which signatures are to appear, in roman boldface type not smaller than 12 point, the ballot title prepared by the city attorney. The text of the measure shall be printed in type not smaller than 8 point.

The heading of the proposed measure shall be in substantially the following form:

Initiative Measure to be Submitted Directly to the Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the city attorney. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

SEC. 22. Section 9204 of the Elections Code is amended to read:

9204. The proponent may seek a writ of mandate requiring the ballot title or summary prepared by the city attorney to be amended. The court shall expedite hearing on the writ. A peremptory writ of mandate shall be issued only upon clear and convincing proof that the ballot title or summary is false, misleading, or inconsistent with the requirements of Section 9203.

SEC. 23. Section 9237.5 is added to the Elections Code, to read:

9237.5. The provisions of this code relating to the form of petitions, the duties of the county elections official, and the manner of holding elections shall govern the petition procedure and submission of the ordinance to the voters.

SEC. 24. 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. Hyphenated words that appear in any generally available standard reference dictionary, published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted, shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate 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. 25. Section 13112 of the Elections Code is amended to read:

13112. The Secretary of State shall conduct a drawing of the letters of the alphabet, the result of which shall be known as a randomized alphabet. The procedure shall be as follows:

(a) Each letter of the alphabet shall be written on a separate slip of paper, each of which shall be folded and inserted into a capsule. Each capsule shall be opaque and of uniform weight, color, size, shape, and texture. The capsules shall be placed in a container, which shall be shaken vigorously in order to mix the capsules thoroughly. The container then shall be opened and the capsules removed at random one at a time. As each is removed, it shall be opened and the letter on the slip of paper read aloud and written down. The resulting random order of letters constitutes the randomized alphabet, which is to be used in the same manner as the conventional alphabet in determining the order of all candidates in all elections. For example, if two candidates with the surnames Campbell and Carlson are running for the same office, their order on the ballot will depend on the order in which the letters M and R were drawn in the randomized alphabet drawing.

(b) (1) There shall be four drawings, three in each even-numbered year and one in each odd-numbered year. Each drawing shall be held at 11 a.m. on the date specified in this subdivision. The results of each drawing shall be mailed immediately to each county elections official responsible for conducting an election to which the drawing is applicable, who shall use it in determining the order on the ballot of the names of the candidates for office.

(A) The first drawing under this subdivision shall take place on the 82nd day before the April general law city elections, and shall apply to those elections and any other elections held at the same time.

(B) The second drawing under this subdivision shall take place on the 82nd day before the direct primary of an even-numbered year, and shall apply to all candidates on the ballot in that election.

(C) (i) The third drawing under this subdivision shall take place on the 82nd day before the November general election of an even-numbered year, and shall apply to all candidates on the ballot in the November general election.

(ii) In the case of the primary election and the November general election, the Secretary of State shall certify and transmit to each county elections official the order in which the names of federal and state candidates, with the exception of candidates for State Senate

and Assembly, shall appear on the ballot. The elections official shall determine the order on the ballot of all other candidates using the appropriate randomized alphabet for that purpose.

(D) The fourth drawing under this subdivision shall take place on the 82nd day before the first Tuesday after the first Monday in November of the odd-numbered year, and shall apply to all candidates on the ballot in the elections held on that date.

(2) In the event there is to be an election of candidates to a special district, school district, charter city, or other local government body at the same time as one of the four major election dates specified in subparagraphs (A) to (D), inclusive, and the last possible day to file nomination papers for the local election would occur after the date of the drawing for the major election date, the procedure set forth in Section 13113 shall apply.

(c) Each randomized alphabet drawing shall be open to the public. At least 10 days prior to a drawing, the Secretary of State shall notify the news media and other interested parties of the date, time, and place of the drawing. The president of each statewide association of local officials with responsibilities for conducting elections shall be invited by the Secretary of State to attend each drawing or send a representative. The state chairman of each qualified political party shall be invited to attend or send a representative in the case of drawings held to determine the order of candidates on the primary election ballot, the November general election ballot, or a special election ballot as provided for in subdivision (d).

(d) In the case of any special election for State Assembly, State Senate, or Representative in Congress, on the first weekday after the close of filing of nomination papers for the office, the Secretary of State shall conduct a public drawing to produce a randomized alphabet in the same manner as provided for in subdivisions (a) and (c). The resulting randomized alphabet shall be used for determining the order on the ballot of the candidates in both the primary election for the special election and in the special election.

SEC. 26. Section 13300.5 is added to the Elections Code, to read:

13300.5. In order to facilitate the timely production and distribution of sample ballots, the county elections official may prepare a combined sample ballot.

SEC. 27. Section 1780 of the Government Code is amended to read:

1780. (a) Notwithstanding any other provision of law, a vacancy in any elective office on the governing board of a special district, other than those specified in Section 1781, shall be filled as provided in this section. The district shall notify the county elections official of the vacancy no later than 15 days following either the date on which the district board is notified of the vacancy or the effective date of the vacancy, whichever is later. The remaining district board members may fill the vacancy by appointment. The person appointed shall hold office until the next general district election that

is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall fill the balance of the unexpired term. If the term of office is due to expire following the next general district election and that election is scheduled 130 or more days after the date the county elections official is notified of the vacancy, the person appointed to the vacancy shall fill the balance of the unexpired term of his or her predecessor. Appointments pursuant to this subdivision shall be made within a period of 60 days immediately subsequent to either the date on which the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, and a notice of the vacancy shall be posted in three or more conspicuous places in the district at least 15 days before the appointment is made. The county elections official shall be notified of the appointment no later than 15 days after the appointment. In lieu of making an appointment the remaining members of the board may within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, call an election to fill the vacancy. The election shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is 130 or more days after the date the district board calls the election.

(b) If the vacancy is not filled by the district board as specified, or if the board has not called for an election within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, the city council of the city in which the district is wholly located, or if the district is not wholly located within a city, the board of supervisors of the county representing the larger portion of the district area in which the election to fill the vacancy will be held, may fill the vacancy within 90 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, or the city council or county supervisors may order the district to call an election to fill the vacancy. The election shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is 130 or more days after the date the city council or board of supervisors calls the election.

(c) (1) If within 90 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, the remaining members of the board or the appropriate board of supervisors or city council have not filled the vacancy and no election has been called for, the district shall call an election to fill the vacancy. The election shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is 130 or more days after the date the district board calls the election.

(2) If the number of remaining members of the board falls below a quorum, at the request of the district secretary, or a remaining board member, the board of supervisors or the city council may waive the 60-day period provided in subdivision (a) and appoint immediately to fill the vacancy as provided in subdivision (a), or may call an election to fill the vacancy. The election shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is held 130 or more days after the date the city council or board of supervisors calls the election.

The board of supervisors or the city council shall only fill enough vacancies to provide the board with a quorum.

(d) Persons appointed to fill a vacancy shall hold office until the next general district election that is scheduled 130 or more days after the date the county elections official is notified of the vacancy and thereafter until the person elected at that election to fill the vacancy has been qualified, but persons elected to fill a vacancy shall hold office for the unexpired balance of the term of office.

SEC. 28. Section 6254.4 of the Government Code is amended to read:

6254.4. (a) The home address, telephone number, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except pursuant to Section 2194 of the Elections Code.

(b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

(c) The California driver's license number or California identification card number shown on a voter registration card of a registered voter is confidential and shall not be disclosed to any person.

SEC. 29. Section 88002.5 is added to the Government Code, to read:

88002.5. (a) The ballot pamphlet shall also contain a section, located near the front of the pamphlet, that provides a concise summary of the general meaning and effect of "yes" and "no" votes on each state measure.

(b) The summary statements required by this section shall be prepared by the Legislative Analyst. These statements are not intended to provide comprehensive information on each measure. The Legislative Analyst shall be solely responsible for determining the contents of these statements. The statements shall be available for public examination and amendment pursuant to Section 88006.

SEC. 30. The Legislature finds and declares that the provisions of Section 29 of this bill further the purposes of the Political Reform Act

of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 31. 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.

CHAPTER 313

An act to amend Sections 663.5, 675, and 11580.1 of the Insurance Code, relating to insurance.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 663.5 of the Insurance Code is amended to read:

663.5. (a) No insurer shall fail to renew a policy solely on the basis of the age of the insured.

(b) On and after January 1, 2000, no insurer shall fail to renew a policy solely on the grounds that a claim is pending under the policy. This subdivision shall not be construed to limit an insurer's ability to nonrenew a policy based upon a directive from the commissioner for solvency or other financially related issues. This subdivision shall not be construed to limit an insurer's right to cancel a policy pursuant to Section 676.

SEC. 2. Section 675 of the Insurance Code is amended to read:

675. (a) Except as provided in Sections 676.8 and 679.6, this chapter shall apply to policies of insurance, other than automobile insurance and workers' compensation insurance, on risks located or resident in this state which are issued and take effect or which are renewed after the effective date of this chapter and insuring any of the following contingencies:

(1) Loss of or damage to real property which is used predominantly for residential purposes and which consists of not more than four dwelling units.

(2) Loss of or damage to personal property in which natural persons resident in specifically described real property of the kind described in paragraph (1) have an insurable interest, except personal property used in the conduct of a commercial or industrial enterprise.

(3) Legal liability of a natural person or persons for loss of, damage to, or injury to, persons or property, but not including policies primarily insuring risks arising from the conduct of a commercial or industrial enterprise.

(b) This chapter shall not be construed so as to modify or negate any of the provisions of Chapter 3 (commencing with Section 330) of Part 1 of Division 1, nor to destroy any rights or remedies therein provided.

(c) On and after January 1, 2000, an insurer may not refuse to renew a policy of insurance specified in subdivision (a) solely on the grounds that a claim is pending under the policy. This subdivision is not applicable to claims made under coverage for loss or damage caused by the peril of earthquake as provided in Chapter 8.5 (commencing with Section 10081) or Chapter 8.6 (commencing with Section 10089.5), of Part 1 of Division 2.

SEC. 3. Section 11580.1 of the Insurance Code is amended to read:

11580.1. (a) No policy of automobile liability insurance described in Section 16054 of the Vehicle Code covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be issued or delivered in this state on or after the effective date of this section unless it contains the provisions set forth in subdivision (b). However, none of the requirements of subdivision (b) shall apply to the insurance afforded under the policy (1) to the extent that the insurance exceeds the limits specified in subdivision (a) of Section 16056 of the Vehicle Code, or (2) if the policy contains an underlying insurance requirement, or provides for a retained limit of self-insurance, equal to or greater than the limits specified in subdivision (a) of Section 16056 of the Vehicle Code.

(b) Every policy of automobile liability insurance to which subdivision (a) applies shall contain all of the following provisions:

(1) Coverage limits not less than the limits specified in subdivision (a) of Section 16056 of the Vehicle Code.

(2) Designation by explicit description of, or appropriate reference to, the motor vehicles or class of motor vehicles to which coverage is specifically granted.

(3) Designation by explicit description of the purposes for which coverage for those motor vehicles is specifically excluded.

(4) Provision affording insurance to the named insured with respect to any owned or leased motor vehicle covered by the policy, and to the same extent that insurance is afforded to the named insured, to any other person using the motor vehicle, provided the use is by the named insured or with his or her permission, express or implied, and within the scope of that permission, except that: (i) with regard to insurance afforded for the loading or unloading of the motor vehicle, the insurance may be limited to apply only to the named insured, a relative of the named insured who is a resident of the named insured's household, a lessee or bailee of the motor vehicle, or an employee of any of those persons; and (ii) the insurance

afforded to any person other than the named insured need not apply to: (A) any employee with respect to bodily injury sustained by a fellow employee injured in the scope and course of his or her employment, or (B) any person, or to any agent or employee thereof, employed or otherwise engaged in the business of selling, repairing, servicing, delivering, testing, road-testing, parking, or storing automobiles with respect to any accident arising out of the maintenance or use of a motor vehicle in connection therewith. As used in this chapter, "owned motor vehicle" includes all motor vehicles described and rated in the policy.

(c) In addition to any exclusion provided in paragraph (3) of subdivision (b), the insurance afforded by any policy of automobile liability insurance to which subdivision (a) applies, including the insurer's obligation to defend, may, by appropriate policy provision, be made inapplicable to any or all of the following:

(1) Liability assumed by the insured under contract.

(2) Liability for bodily injury or property damage caused intentionally by or at the direction of the insured.

(3) Liability imposed upon or assumed by the insured under any workers' compensation law.

(4) Liability for bodily injury to any employee of the insured arising out of and in the course of his or her employment.

(5) Liability for bodily injury to an insured or liability for bodily injury to an insured whenever the ultimate benefits of that indemnification accrue directly or indirectly to an insured.

(6) Liability for damage to property owned, rented to, transported by, or in the charge of, an insured. A motor vehicle operated by an insured shall be considered to be property in the charge of an insured.

(7) Liability for any bodily injury or property damage with respect to which insurance is or can be afforded under a nuclear energy liability policy.

(8) Any motor vehicle or class of motor vehicles, as described or designated in the policy, with respect to which coverage is explicitly excluded, in whole or in part.

The term "the insured" as used in paragraphs (1), (2), (3), and (4) shall mean only that insured under the policy against whom the particular claim is made or suit brought. The term "an insured" as used in paragraphs (5) and (6) shall mean any insured under the policy including those persons who would have otherwise been included within the policy's definition of an insured but, by agreement, are subject to the limitations of paragraph (1) of subdivision (d).

(d) Notwithstanding the provisions of paragraph (4) of subdivision (b), or the provisions of Article 2 (commencing with Section 16450) of Chapter 3 of Division 7 of, or Article 2 (commencing with Section 17150) of Chapter 1 of Division 9 of, the Vehicle Code, the insurer and any named insured may, by the terms

of any policy of automobile liability insurance to which subdivision (a) applies, or by a separate writing relating thereto, agree as to either or both of the following limitations, the agreement to be binding upon every insured to whom the policy applies and upon every third-party claimant:

(1) That coverage and the insurer's obligation to defend under the policy shall not apply nor accrue to the benefit of any insured or any third-party claimant while any motor vehicle is being used or operated by a natural person or persons designated by name. These limitations shall apply to any use or operation of a motor vehicle, including the negligent or alleged negligent entrustment of a motor vehicle to that designated person or persons. This agreement applies to all coverage provided by that policy and is sufficient to comply with the requirements of paragraph (2) of subdivision (a) of Section 11580.2 to delete coverage when a motor vehicle is operated by a natural person or persons designated by name. The insurer shall have an obligation to defend the named insured when all of the following apply to that designated natural person:

(A) He or she is a resident of the same household as the named insured.

(B) As a result of operating the insured motor vehicle of the named insured, he or she is jointly sued with the named insured.

(C) He or she is an insured under a separate automobile liability insurance policy issued to him or her as a named insured, which policy does not provide a defense to the named insured.

An agreement made by the insurer and any named insured more than 60 days following the inception of the policy excluding a designated person by name shall be effective from the date of the agreement and shall, with the signature of a named insured, be conclusive evidence of the validity of the agreement.

That agreement shall remain in force as long as the policy remains in force, and shall apply to any continuation, renewal, or replacement of the policy by the named insured, or reinstatement of the policy within 30 days of any lapse thereof.

(2) That with regard to a policy issued to a named insured engaged in the business of leasing vehicles for those vehicles that are leased for a term in excess of six months, or selling, repairing, servicing, delivering, testing, road-testing, parking, or storing automobiles, coverage shall not apply to any person other than the named insured or his or her agent or employee, except to the extent that the limits of liability of any other valid and collectible insurance available to that person are not equal to the limits of liability specified in subdivision (a) of Section 16056 of the Vehicle Code. If the policy is issued to a named insured engaged in the business of leasing vehicles, which business includes the lease of vehicles for a term in excess of six months, and the lessor includes in the lease automobile liability insurance, the terms and limits of which are not otherwise specified in the lease, the named insured shall incorporate a provision

in each vehicle lease contract advising the lessee of the provisions of this subdivision and the fact that this limitation is applicable except as otherwise provided for by statute or federal law.

(e) Nothing in this section or in Section 16054 or 16450 of the Vehicle Code shall be construed to constitute a homeowner's policy, personal and residence liability policy, personal and farm liability policy, general liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage as an "automobile liability policy" within the meaning of Section 16054 of the Vehicle Code, or as a "motor vehicle liability policy" within the meaning of Section 16450 of the Vehicle Code, nor shall any provision of this section apply to a policy that provides insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle in the Republic of Mexico issued or delivered in this state by a nonadmitted Mexican insurer, notwithstanding that the policy may provide automobile or motor vehicle liability coverage on insured premises or the ways immediately adjoining.

(f) On and after January 1, 1976, no policy of automobile liability insurance described in subdivision (a) shall be issued, amended, or renewed in this state if it contains any provision that expressly or impliedly excludes from coverage under the policy the operation or use of an insured motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation. This subdivision shall not apply in any case in which the named insured receives any remuneration of any kind other than reimbursement for actual mileage driven in the performance of those services at a rate not to exceed the following:

(1) For the 1980–81 fiscal year, the maximum rate authorized by the State Board of Control, which shall also be known as the "base rate."

(2) For each fiscal year thereafter, the greater of either (A) the maximum rate authorized by the State Board of Control or (B) the base rate as adjusted by the California Consumer Price Index.

No policy of insurance issued under this section may be canceled by an insurer solely for the reason that the named insured is performing volunteer services for a nonprofit charitable organization or governmental agency consisting of providing social service transportation.

For the purposes of this section, "social service transportation" means transportation services provided by private nonprofit organizations or individuals to either individuals who are senior citizens or individuals or groups of individuals who have special transportation needs because of physical or mental conditions and

supported in whole or in part by funding from private or public agencies.

(g) Notwithstanding the provisions of paragraph (4) of subdivision (b) of this section, or the provisions of Article 2 (commencing with Section 16450) of Chapter 3 of Division 7 of, or Article 2 (commencing with Section 17150) of Chapter 1 of Division 9 of, the Vehicle Code, a Mexican nonadmitted insurer and any named insured may, by the terms of any policy of automobile insurance for use solely in the Republic of Mexico to which subdivision (a) applies, or by a separate writing relating thereto, agree to the limitation that coverage under that policy shall not apply to any person riding in or occupying a vehicle owned by the insured or driven by another person with the permission of the insured. The agreement shall be binding upon every insured to whom the policy applies and upon any third-party claimant.

(h) No policy of automobile insurance that provides insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle solely in the Republic of Mexico issued by a nonadmitted Mexican insurance company, shall be subject to, or provide coverage for, those coverages provided in Section 11580.2.

CHAPTER 314

An act to repeal Section 1490 of the Insurance Code, relating to reciprocal insurers.

[Approved by Governor September 1, 1999. Filed with Secretary of State September 2, 1999.]

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

SECTION 1. Section 1490 of the Insurance Code is repealed.

CHAPTER 315

An act to amend Section 18766 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 2, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 18766 of the Revenue and Taxation Code is amended to read:

18766. (a) This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes that date.

(b) If, in any calendar year, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2000, or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 1992, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

CHAPTER 316

An act to amend Sections 221, 9564, and 40000.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 2, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 221 of the Vehicle Code is amended to read:

221. (a) The term "automobile dismantler" does not include any of the following:

(1) The owner or operator of any premises on which two or more unregistered and inoperable vehicles are held or stored, if the vehicles are used for restoration or replacement parts or otherwise, in conjunction with any of the following:

(A) Any business of a licensed dealer, manufacturer, or transporter.

(B) The operation and maintenance of any fleet of motor vehicles used for the transportation of persons or property.

(C) Any agricultural, farming, mining, or ranching business that does not sell parts of the vehicles, except for either of the following purposes:

(i) For use in repairs performed by that business.

(ii) For use by a licensed dismantler or an entity described in paragraph (3).

(D) Any motor vehicle repair business registered with the Bureau of Automotive Repair, or those exempt from registration under the Business and Professions Code or applicable regulations, that does not sell parts of the vehicles, except for either of the following purposes:

(i) For use in repairs performed by that business.

(ii) For use by a licensed dismantler or an entity described in paragraph (3).

(2) Any person engaged in the restoration of vehicles of the type described in Section 5004 or in the restoration of other vehicles having historic or classic significance.

(3) The owner of a steel mill, scrap metal processing facility, or similar establishment purchasing vehicles of a type subject to registration, not for the purpose of selling the vehicles, in whole or in part, but exclusively for the purpose of reducing the vehicles to their component materials, if either the facility obtains, on a form approved or provided by the department, a certification by the person from whom the vehicles are obtained that each of the vehicles has been cleared for dismantling pursuant to Section 5500 or 11520, or the facility complies with Section 9564.

(4) Any person who acquires used parts or components for resale from vehicles which have been previously cleared for dismantling pursuant to Section 5500 or 11520.

Nothing in this paragraph permits a dismantler to acquire or sell used parts or components during the time the dismantler license is under suspension.

(b) Any vehicle acquired for the purpose specified in paragraph (3) of subdivision (a) from other than a licensed dismantler, or from other than an independent hauler who obtained the vehicle, or parts thereof from a licensed dismantler, shall be accompanied by either a receipt issued by the department evidencing proof of clearance for dismantling under Section 5500, or a copy of the ordinance or order issued by a local authority for the abatement of the vehicle pursuant to Section 22660. The steel mill, scrap metal processing facility, or

similar establishment acquiring the vehicle shall attach the form evidencing clearance or abatement to the certification required pursuant to this section.

All forms specified in paragraph (3) of subdivision (a) and in this subdivision shall be available for inspection by a peace officer during business hours.

SEC. 2. Section 9564 of the Vehicle Code is amended to read:

9564. (a) A scrap metal processor, as described in paragraph (3) of subdivision (a) of Section 221, who acquires a vehicle of a type subject to registration under this code, and who complies with all the provisions of this section, is not required to submit a certificate of nonoperation in lieu of fees or to pay fees that would otherwise be required if the vehicle were to be currently registered.

(b) A scrap metal processor who acquires a vehicle as provided in subdivision (a) shall submit either of the following to the department before reducing the vehicle to its component materials:

(1) Documentation that the vehicle was acquired pursuant to Section 22669 and disposed of in compliance with Article 2 (commencing with Section 22850) of Chapter 10 of Division 11.

(2) The properly endorsed certificate of title transferring title to the scrap iron processor and any available license plates or registration documents.

(c) A vehicle delivered to a scrap metal processor under subdivision (a) shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

SEC. 3. Section 40000.5 of the Vehicle Code is amended to read:

40000.5. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Section 20, relating to false statements.

Section 27, relating to impersonating a member of the California Highway Patrol.

Section 31, relating to giving false information.

Paragraph (3) of subdivision (a), or subdivision (b), or both, of Section 221, relating to proper evidence of clearance for dismantling.

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.

CHAPTER 317

An act to amend Sections 742.31 and 742.44 of, and to add Section 742.435 to, the Insurance Code, relating to insurance.

[Approved by Governor September 2, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 742.31 of the Insurance Code is amended to read:

742.31. Each self-funded or partially self-funded multiple employer welfare arrangement transacting business in the state shall file all of the following with the commissioner:

(a) No later than May 15th of each calendar year or four months and 15 days after the end of each fiscal year not on a calendar year basis, financial statements audited by a certified public accountant, and an actuarial opinion rendered by a qualified actuary. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards that the commissioner may, by regulation, prescribe. For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations of the commissioner. The qualified actuary shall be liable for damages to any person caused by his or her negligence or other tortious conduct.

(b) Within 60 days after the end of each fiscal quarter, unaudited financial statements, affirmed by an appropriate officer or agent of the multiple employer welfare arrangement.

(c) Within 60 days after the end of each fiscal quarter, a report certifying that the multiple employer welfare arrangement maintains cash or liquid assets in a claim reserve account sufficient to meet its contractual obligations and that it maintains a policy of aggregate and specific stop loss insurance.

SEC. 2. Section 742.435 is added to the Insurance Code, to read:

742.435. The Department of Insurance, in consultation with the Department of Corporations, shall conduct an evaluation of multiple employer welfare arrangements and report to the Legislature and the Governor by January 1, 2002. The evaluation shall include, but not be limited to, the effectiveness of multiple employer welfare arrangements in providing participants with options for affordable health care coverage, and the effect of multiple employer welfare arrangements on persons or entities purchasing health care coverage who are not multiple employer welfare arrangement participants.

SEC. 3. Section 742.44 of the Insurance Code is amended to read:

742.44. This article shall remain in effect until January 1, 2004, and as of that date is repealed, unless a later enacted statute that is enacted before that date deletes or extends that date.

CHAPTER 318

An act to amend Sections 6980.18, 6980.42, 7503.1, 7506.5, 7525.1, 7582.7, 7583.9, 7593.1, and 7598.4 of the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 6980.18 of the Business and Professions Code is amended to read:

6980.18. (a) Each individual applicant, each partner of a partnership, and designated officers of a corporation shall submit with the application one personal identification form provided by the chief upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application, together with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, and a personal description of each person, respectively. Any photograph submitted by an applicant shall measure $1^1/_4$ by $1^1/_2$ inches, with a face size no greater than 1 by $1^1/_4$ inches. The identification form shall include residence addresses and employment history for the previous five years.

(b) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 2. Section 6980.42 of the Business and Professions Code is amended to read:

6980.42. (a) Within seven days after commencing employment, any employee of a locksmith who is not currently registered with the bureau and who is performing the services of a locksmith shall submit to the bureau a completed application for registration, two classifiable fingerprint cards, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, and the appropriate registration fee. No application is required to be submitted if the employee terminated employment within seven days. "Within seven days" means 168 hours from the time an employee provides any service for which he or she shall be compensated by a licensee.

(b) Except as provided in subdivision (c), an employee of a licensee may be assigned to work with a temporary registration card issued by the licensee 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 if there is an abnormal delay in processing applications for locksmith employees. For purposes of this section, the 120-day period shall commence on the date the applicant signs the application.

(c) An employee who has been convicted of a crime prior to applying for a position as a locksmith employee performing the services of a locksmith shall not be issued a temporary registration card and shall not be assigned to work as a locksmith until the bureau issues a permanent registration card. This subdivision shall apply only if the applicant for registration 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.

(d) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 3. Section 7503.1 of the Business and Professions Code is amended to read:

7503.1. (a) Each individual applicant for examination and each manager, partner of a partnership, and officer of a corporation shall submit with the application, one personal identification form provided by the chief upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, and a personal description of each person respectively.

(b) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 4. Section 7506.5 of the Business and Professions Code is amended to read:

7506.5. All information obtained on the application shall be confidential pursuant to the Information Practices Act (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall not be released to the public except for the registrant's full name, the employer's name and address, and the registration number. The application shall be verified and shall include:

(a) The full name, residence address, residence telephone number, date and place of birth, and driver's license number of the applicant or registrant.

(b) A statement listing any and all names used by the applicant or registrant, other than the name by which he or she is currently known. If the applicant or registrant has never used a name other than his or her true name, this fact shall be set forth in the statement.

(c) The name and address of the employer and the date the employment commenced.

(d) The title of the position occupied by the applicant or registrant and a description of his or her duties.

(e) Two recent photographs of the applicant or registrant, of a type prescribed by the chief, and two classifiable sets of his or her fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check.

(f) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 4.5. Section 7506.5 of the Business and Professions Code is amended to read:

7506.5. All information obtained on the application shall be confidential pursuant to the Information Practices Act (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall not be released to the public except for the registrant's full name, the licensee's name and address, and the registration number. The application shall be verified and shall include:

(a) The full name, residence address, residence telephone number, date and place of birth, and driver's license number of the applicant or registrant.

(b) A statement listing any and all names used by the applicant or registrant, other than the name by which he or she is currently known. If the applicant or registrant has never used a name other than his or her true name, this fact shall be set forth in the statement.

(c) The name and address of the licensee and the date the employment or contract commenced.

(d) The title of the position occupied by the applicant or registrant and a description of his or her duties.

(e) Two recent photographs of the applicant or registrant, of a type prescribed by the chief, and two classifiable sets of his or her fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check.

(f) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 5. Section 7525.1 of the Business and Professions Code is amended to read:

7525.1. An application shall be verified and shall include:

(a) The full name and business address of the applicant.

(b) The name under which the applicant intends to do business.

(c) A statement as to the general nature of the business in which the applicant intends to engage.

(d) A verified statement of his or her experience qualifications.

(e) (1) If the applicant is an individual, a qualified manager, partner of a partnership or officer of a corporation designated in subdivision (h), one personal identification form provided by the bureau upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, on a form approved by the Department of Justice, and a personal description of each person, respectively. The identification form shall include residence addresses and employment history for the previous five years and be signed under penalty of perjury.

(2) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(f) In addition, if the applicant for a license is an individual, the application shall list all other names known as or used during the past 10 years and shall state that the applicant is to be personally and actively in charge of the business for which the license is sought, or if any other qualified manager is to be actively in charge of the business, the application shall be subscribed, verified, and signed by the applicant, under penalty of perjury, and if any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person under penalty of perjury.

(g) If the applicants for license are copartners, the application shall state the true names and addresses of all partners and the name of the partner to be actively in charge of the business for which the license is sought; and list all other names known as or used during the past 10 years, or if a qualified manager other than a partner is to be actively in charge of the business, then the application shall be subscribed, verified, and signed by all of the partners under penalty of perjury, and if any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person, under penalty of perjury, under penalty of perjury by all of the partners and qualified manager, or by all of the partners or the qualified manager.

(h) If the applicant for license is a corporation, the application shall state the true names, and complete residence addresses of the

chief executive officer, secretary, chief financial officer, and any other corporate officer who will be active in the business to be licensed. The application shall also state the name and address of the designated person to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by a duly authorized officer of the applicant and by the qualified manager thereof, under penalty of perjury.

(i) Any other information, evidence, statements, or documents as may be required by the director.

SEC. 6. Section 7582.7 of the Business and Professions Code is amended to read:

7582.7. An application shall be verified and shall include:

(a) The full name and business address of the applicant.

(b) The name under which the applicant intends to do business.

(c) A statement as to the general nature of the business in which the applicant intends to engage.

(d) A statement as to the type of license for which the applicant is applying.

(e) A verified statement of his or her experience qualifications.

(f) (1) If the applicant is an individual, a qualified manager, partner of a partnership, or officer of a corporation designated in subdivision (i), one personal identification form provided by the bureau upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, on a form approved by the Department of Justice, and a personal description of each person, respectively. The identification form shall include residence addresses and employment history for the previous five years and be signed under penalty of perjury.

(2) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(g) In addition, if the applicant for a license is an individual, the application shall list all other names known as or used during the past 10 years and shall state that the applicant is to be personally and actively in charge of the business for which the license is sought, or if any other qualified manager is to be actively in charge of the business, the application shall be subscribed, verified, and signed by the applicant, under penalty of perjury, and if any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person under penalty of perjury.

(h) If the applicants for license are copartners, the application shall state the true names and addresses of all partners and the name of the partner to be actively in charge of the business for which the

license is sought; and list all other names known as or used during the past 10 years, or if a qualified manager other than a partner is to be actively in charge of the business, then the application shall be subscribed, verified, and signed by all of the partners under penalty of perjury, and if any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person, under penalty of perjury, under penalty of perjury by all of the partners and qualified manager, or by all of the partners or the qualified manager.

(i) If the applicant for license is a corporation, the application shall state the true names, and complete residence addresses of the chief executive officer, secretary, chief financial officer, and any other corporate officer who will be active in the business to be licensed. The application shall also state the name and address of the designated person to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by a duly authorized officer of the applicant and by the qualified manager thereof, under penalty of perjury.

(j) Any other information, evidence, statements, or documents as may be required by the director.

SEC. 7. 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 for submission to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check. 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.

(f) The requirement of submission of fingerprint cards to the Federal Bureau of Investigation shall not apply to currently employed, full-time peace officers holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or to level I or level II reserve officers as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code.

(g) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 8. Section 7593.1 of the Business and Professions Code is amended to read:

7593.1. (a) Each individual applicant and each qualified manager, partner of a partnership, and designated officers of a corporation shall submit with the application, one personal identification form provided by the chief upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, and personal description of each such person, respectively. The identification form shall include residence addresses and employment history for the previous five years.

(b) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 9. Section 7598.4 of the Business and Professions Code is amended to read:

7598.4. (a) Within three working days after commencing employment, any employee performing the function of alarm agent, who is not currently registered with the bureau, shall submit to the bureau a completed application for registration, two classifiable fingerprint cards, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, and the appropriate registration fee. All information obtained on the application shall be confidential pursuant to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall not be released to the public except for the registrant's full name, the

employer's name and address, and the registration number. Nothing in this section shall preclude the release of information to the public regarding the status of a registrant, or the release of information to law enforcement agencies or other governmental agencies for other authorized purposes.

(b) No application is required to be submitted if the employee terminated employment within the three working days. "Within three working days" means 72 hours from the time an employee is first compensated for alarm agent services by a licensee.

(c) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 10. Section 4.5 of this bill incorporates amendments to Section 7506.5 of the Business and Professions Code proposed by both this bill and SB 378. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 7506.5 of the Business and Professions Code, and (3) this bill is enacted after SB 378, in which case Section 4 of this bill shall not become operative.

CHAPTER 319

An act to amend Section 1788 of, and to add Section 1788.17 to, the Civil Code, relating to debt collection.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 1788 of the Civil Code is amended to read:

1788. This title may be cited as the Rosenthal Fair Debt Collection Practices Act.

SEC. 2. Section 1788.17 is added to the Civil Code, to read:

1788.17. Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code. However, subsection (11) of Section 1692e and Section 1692g shall not apply to any person specified in paragraphs (A) and (B) of subsection (6) of Section 1692a of Title 15 of the United States Code. The references to federal codes in this section refer to those codes as they read January 1, 2000.

CHAPTER 320

An act to add and repeal Section 5408.7 of the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 5408.7 is added to the Business and Professions Code, to read:

5408.7. (a) It is the intent of the Legislature that this section shall not serve as a precedent for other changes to the law regarding outdoor advertising displays on, or adjacent to, highways. The Legislature recognizes that the streets in the City and County of San Francisco that are designated as state or federal highways are unique in that they are also streets with street lights, sidewalks, and many of the other features of busy urban streets. At the same time, these streets double as a way, and often the only way, for people to move through the city and county from one boundary to another. The Legislature recognizes the particular topography of the City and County of San Francisco, the popularity of the area as a tourist destination, the high level of foot traffic, and the unique design of its highways.

(b) For purposes of this section, "street furniture" is any kiosk, trash receptacle, bench, public toilet, news rack, or public telephone placed on, or adjacent to, a street designated as a state or federal highway.

(c) In addition to the advertising displays permitted by Sections 5405, 5408, and 5408.5, advertising displays located on street furniture may be placed on, or adjacent to, any street designated as a state or federal highway within the jurisdiction of a city and county, subject to all of the following conditions:

(1) The advertising display meets the traffic safety standards of the city and county. These standards may include provisions requiring a finding and certification by an appropriate official of the city and county that the proposed advertising display does not constitute a hazard to traffic.

(2) Any advertising display that is within 660 feet of, and visible from, any street designated as a state or federal highway shall be consistent with federal law and regulations.

(3) Advertising displays on street furniture shall be placed in accordance with a permit or agreement with the city and county.

(4) Advertising displays on street furniture shall not extend beyond the exterior limits of the street furniture.

(d) Advertising displays placed on street furniture pursuant to a permit or agreement with the city and county shall not be subject to

the state permit requirements of Article 6 (commencing with Section 5350). This subdivision does not affect the authority of the state to enforce compliance with federal law and regulations, as required by paragraph (2) of subdivision (c).

(e) (1) The city and county shall, upon written notice of any suit or claim of liability against the state for any injury arising out of the placement of an advertising display approved by the city and county pursuant to subdivision (c), defend the state against the claim and provide indemnity to the state against any liability on the suit or claim.

(2) For the purposes of this subdivision, "indemnity" has the same meaning as defined in Section 2772 of the Civil Code.

(f) (1) This section shall become inoperative not later than 60 days from the date the director receives notice from the United States Secretary of Transportation that future operation of this section will result in a reduction of the state's share of federal highway funds pursuant to Section 131 of Title 23 of the United States Code.

(2) Upon receipt of the notice described in paragraph (1), the director shall notify in writing the Secretary of State and the City and County of San Francisco of that receipt.

(3) This section shall be repealed on January 1 immediately following the date the Secretary of State receives the notice required under paragraph (2).

SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable, within the meaning of Section 16 of Article IV of the California Constitution, because of the unique circumstances in the City and County of San Francisco, including the city and county's particular topography, the area's popularity as a tourist destination, and the unique design of the city and county's highways.

CHAPTER 321

An act to amend Sections 5540.5 and 5546 of the Public Resources Code, relating to parks and recreation.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. 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 or greater 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 and the Midpeninsula Regional Open Space 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. 2. Section 5546 of the Public Resources Code is amended to read:

5546. A district may contribute money, in those amounts the board of directors, by resolution, finds to be proper, to the State Park and Recreation Commission or to any municipality, county, or other public corporation, district, or agency, for the purpose of assisting in the acquisition of lands within or outside of the district for the purposes specified in section 5541, or for improving the lands in the manner therein specified, when in the judgment of the board of directors the acquisition or improvement is so located and planned as to be of benefit to the district. A district may grant funds to a private nonprofit entity for the purposes of this section.

CHAPTER 322

An act to add Section 321.7 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Agriculture is among the most important economic activities in this state.

(b) Agriculture in this state uses significant amounts of energy in production on farms and ranches. The high cost of energy for agriculture in this state, relative to the cost of energy in other parts of the country, undermines the competitive position of state agriculture in national and international markets.

(c) There is a need to determine if the following circumstances cause inequitable rates for electricity for agriculture in this state:

(1) Small farms and ranches often pay substantially more per kilowatt hour for utility stranded costs than other energy customers.

(2) The costs of providing electric distribution service in some rural areas are less than the costs for providing that service in other parts of the state, while rates are often higher.

(3) The rates for electric distribution service in some rural areas of the state are higher than in rural areas in other parts of the United States, although the terrain and weather in this state is often less severe.

(d) The primary goal of electrical restructuring was to reduce the cost of electricity for consumers in this state.

(e) To the extent that energy costs for agriculture are inequitable, it is in the public interest to correct the inequities.

SEC. 2. (a) The Energy Resources Conservation and Development Commission shall study the causes of high rates for electrical service to agriculture. The Commission shall include in its study a comparison of rates for agriculture with rates for other customer classes and a comparison of the agricultural electric rates in California with the electric rates for agriculture in other states. The commission may recommend strategies by which agriculture can reduce its electric service costs and identify factors that may affect the rate structure for agricultural electric customers following termination of the rate levels provided for in subdivision (a) of Section 368 of the Public Utilities Code.

(b) Notwithstanding Section 7550.5 of the Government Code, the Energy Resources Conservation and Development Commission shall prepare and submit to the Legislature a report that details its findings and conclusions pursuant to this section on or before September 1, 2000.

SEC. 3. Section 321.7 is added to the Public Utilities Code, to read:

321.7. (a) The commission shall include in the annual work plan access guide prepared by the commission pursuant to Section 321.6 a statement that specifies activities that the commission proposes to reduce the costs of, and rates for, energy, including electricity, and for improving the competitive opportunities for state agriculture and other rural energy consumers.

(b) The commission shall include in the annual report submitted by the commission to the Governor pursuant to Section 316 a statement that specifies the activities and achievements of the commission in reducing the costs of, and rates for, energy, including electricity, for state agriculture and other rural energy consumers.

CHAPTER 323

An act to amend Section 798.25 of the Civil Code, relating to mobilehome parks.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 798.25 of the Civil Code is amended to read:

798.25. (a) When the management proposes an amendment to the park's rules and regulations, the management shall meet and consult with the homeowners in the park, their representatives, or both, after written notice has been given to all the homeowners in the park 10 days or more before the meeting. The notice shall set forth the proposed amendment to the park rules and regulations and shall state the date, time, and location of the meeting.

(b) Following the meeting and consultation with the homeowners, the noticed amendment to the park rules and regulations may be implemented, as to any homeowner, with the consent of that homeowner, or without the homeowner's consent upon written notice of not less than six months, except for regulations applicable to recreational facilities, which may be amended without homeowner consent upon written notice of not less than 60 days.

(c) Written notice to a homeowner whose tenancy commences within the required period of notice of a proposed amendment to the park's rules and regulations under subdivision (b) shall constitute compliance with this section where the written notice is given before the inception of the tenancy.

(d) Any amendment to the park's rules and regulations that creates a new fee payable by the homeowner and that has not been expressly agreed upon by the homeowner and management in the written rental agreement or lease, shall be void and unenforceable.

SEC. 2. The Legislature finds and declares that this act is intended to prohibit park owners from amending park rules and regulations to impose new fees on park residents. The act is not intended to limit the provisions of Article 4 (commencing with Section 798.30) of Chapter 2.5 of Title 2 of Part 2 of Division 2 of the Civil Code with respect to the imposition of fees.

CHAPTER 324

An act to amend Sections 51.2, 51.3, and 51.11 of the Civil Code, relating to housing.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 51.2 of the Civil Code is amended to read:

51.2. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. Where accommodations constructed before February 8, 1982, meet the criteria for senior citizen housing specified in Section 51.4, a business establishment may establish and preserve that housing for senior citizens until January 1, 2001, in accordance with Section 51.4.

(b) This section is intended to clarify the holdings in Marina Point, Ltd. v. Wolfson (1982) 30 Cal. 3d 72 and O'Connor v. Village Green Owners Association (1983) 33 Cal. 3d 790.

(c) This section shall not apply to the County of Riverside.

SEC. 2. Section 51.3 of the Civil Code is amended to read:

51.3. (a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) The Legislature finds and declares that different age limitations for senior citizen housing are appropriate in recognition of the size of a development in relationship to the community in which it is located.

(c) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a permanently physically or mentally impaired or terminally ill adult who is a dependent child of the qualifying resident, senior citizen, or qualified permanent resident as defined in paragraph (2), unless the board of directors or other governing body of the senior citizen housing development determines that there are special circumstances to disallow this particular dependent child as a qualified permanent

resident. Special circumstances means a condition wherein this dependent child is or may be harmful to himself or herself or others.

(4) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that meets any of the following requirements:

(A) At least 70 dwelling units built prior to January 1, 1996, or at least 150 dwelling units built on or after January 1, 1996, in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population of at least 1,000 residents per square mile or 1,000,000 total residents, based on the 1990 census.

(B) At least 100 dwelling units in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population not to exceed 999 residents per square mile and not to exceed 399,999 total residents, based on the 1990 census.

(C) At least 35 dwelling units in any other area.

The number of dwelling units within a development includes all dwelling units developed, whether in single or multiple phases. Developments commenced after July 1, 1986, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident.

(d) The covenants, conditions, and restrictions or other documents or written policy shall not limit occupancy, residency, or use on the basis of age more proscriptively than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident.

(e) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 45 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(f) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident.

(g) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section.

(h) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(i) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(j) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(k) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside.

SEC. 3. Section 51.11 of the Civil Code is amended to read:

51.11. (a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a permanently physically or mentally impaired or terminally ill adult who is a dependent child of the qualifying resident, senior citizen, or qualified permanent resident as defined in paragraph (2), unless the board of

directors or other governing body of the senior citizen housing development determines that there are special circumstances to disallow this particular dependent child as a qualified permanent resident. Special circumstances means a condition wherein this dependent child is or may be harmful to himself or herself or others.

(4) "Senior citizen housing development" means a residential development developed with more than 20 units as a senior community by its developer, zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section 1351, or qualified as a senior community under the federal Fair Housing Amendment Act of 1988, as amended. Developments commenced after July 1, 1986, and before January 1, 1997, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. However, developments may elect to amend their governing documents to become a senior citizen housing development after the expiration date of the public report.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident.

(c) The covenants, conditions, and restrictions or other documents or written policy shall not limit occupancy, residency, or use on the basis of age more restrictively than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident or permitted health care resident.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the

extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Chapter 1147 of the Statutes of 1996.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of Riverside.

———

CHAPTER 325

An act to add Section 31108 to the Corporations Code, relating to franchises.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 31108 is added to the Corporations Code, to read:

31108. There shall be exempted from the provisions of Chapter 2 (commencing with Section 31110), any offer or sale of a franchise if the franchise involves the adding of a new product or service line to the existing business of a prospective franchisee, provided all of the following requirements are met:

(a) For at least the last 24 months prior to the date of sale of the franchise, the prospective franchisee, or if the prospective franchisee is not a natural person, an existing officer, director, or managing agent of the prospective franchisee who has held that position with the prospective franchisee for at least the last 24 months, has been engaged in a business offering products or services substantially similar or related to those to be offered by the franchised business.

(b) The new product or service is substantially similar or related to the product or service being offered by the prospective franchisee's existing business.

(c) The franchised business is to be operated from the same business location as the prospective franchisee's existing business.

(d) The parties anticipated, in good faith, at the time the agreement establishing the franchise relationship was reached, that sales resulting from the franchised business will not represent more than 20 percent of the total sales in dollar volume of the franchisee on an annual basis.

(e) The prospective franchisee is not controlled by the franchisor.

(f) The franchisor files with the commissioner a notice of exemption and pays the fee prescribed in subdivision (f) of Section 31500 prior to an offer or sale of such a franchise in this state during any calendar year in which one or more of those franchises are sold.

CHAPTER 326

An act to add Section 798.44 to the Civil Code, relating to mobilehomes.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Liquified petroleum gas is a source of heat for mobilehome owners and tenants within a mobilehome park.

(b) Many mobilehome park owners do not permit mobilehome owners or tenants to purchase their own liquified petroleum gas, thereby requiring mobilehome owners or tenants to purchase liquified petroleum gas from the mobilehome park owner. The park owner usually monitors the mobilehome owners' or tenants' use of liquified petroleum gas through a master meter and submeter.

SEC. 2. Section 798.44 is added to the Civil Code, to read:

798.44. (a) The management of a park that does not permit mobilehome owners or park tenants to purchase liquified petroleum gas for use in the mobilehome park from someone other than the mobilehome park management shall not sell liquified petroleum gas to mobilehome owners and tenants within the park at a cost which exceeds 110 percent of the actual price paid by the management of the park for liquified petroleum gas.

(b) The management of a park shall post in a visible location the actual price paid by management for liquified petroleum gas sold pursuant to subdivision (a).

(c) This section shall apply only to mobilehome parks regulated under the Mobilehome Residency Law. This section shall not apply to recreational vehicle parks, as defined in Section 18215 of the Health and Safety Code, which exclusively serve recreational vehicles, as defined in Section 18010 of the Health and Safety Code.

(d) Nothing in this section is intended to abrogate any rights which mobilehome park owners may have under Section 798.31 of the Civil Code.

CHAPTER 327

An act to add Section 311.4 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The Legislature has encouraged state agencies to make information available to the public through various means, including the Internet.

(2) The Internet has permitted increased communication between the people of this state and state agencies, educating the people of this state on the role and function of each agency.

(3) The Internet web site maintained by the Public Utilities Commission provides the people of this state with information regarding the commission and the markets and services that the commission regulates. The web site also provides a way for members of the public to communicate with the commission.

(4) Currently, the Public Utilities Commission web site accepts informal complaints.

(5) Customers for services regulated by the Public Utilities Commission and the companies offering those services are entitled to an efficient dispute resolution process.

(6) The Internet is an ideal means for resolving disputes between customers and service providers in an efficient manner, regardless of the geographic location of the customer.

(b) It is the intent of the Legislature to enhance the role of the Public Utilities Commission by allowing customers and service providers the option to resolve disputes through electronic communications to provide a greater level of efficiency for the parties involved and to make the Public Utilities Commission dispute resolution process accessible to all people of this state.

SEC. 2. Section 311.4 is added to the Public Utilities Code, to read:

311.4. (a) On or after July 1, 2001, the commission shall establish procedures to permit the submission of informal complaints through electronic means in accordance with this section.

(b) On or before January 1, 2002, the commission shall provide on its Internet web site the means by which consumers may submit informal complaints through electronic means.

(c) It is the intent of the Legislature that, commencing one year from the date that the procedures described in subdivision (a) are implemented, the commission annually review the procedures and the technology involved to ensure the continued effectiveness of the program, and report any findings to the Legislature.

(d) For the purpose of this section, "electronic means" includes, but shall not be limited to, e-mail or the Internet, or both.

(e) Upon the receipt of an informal complaint submitted by electronic means, the commission shall immediately forward the complaint to the entity named in the complaint.

(f) The commission shall permit the submission of informal complaints through electronic means, if, as determined by the commission, both of the following conditions are met:

(1) The dollar amount in the complaint does not exceed the jurisdictional limit of a small claims court specified in subdivision (a) of Section 116.220 of the Code of Civil Procedure.

(2) The commission has addressed any impediments in the electronic systems employed by the commission that would prevent

or substantially adversely affect the ability of the commission to receive informal complaints by electronic means.

(g) The commission shall include a notice on its Internet web site of the availability of the procedures described in subdivision (a).

(h) For the purposes of implementing this section, the commission shall make available to the public an industry specific online complaint form that allows a customer to specify information that the commission determines to be relevant for purposes of resolving a dispute, including the account number, the type of dispute, and the opportunity to make general comments.

(i) This act may not be implemented, and no information technology-related preparatory work may be undertaken in connection with this act prior to July 1, 2001, without the concurrence of the commission and the authorization of the Department of Information Technology pursuant to Executive Order D-3-99.

CHAPTER 328

An act to amend Sections 25281, 25299.10, 25299.13, 25299.23.1, 25299.24, 25299.37, 25299.39, 25299.39.1, 25299.39.2, 25299.51, 25299.52, 25299.53, 25299.54, 25299.57, and 25299.59 of, to add Sections 25299.11.5, 25299.62, and 25299.63 to, to repeal Section 25299.38 of, and to repeal and add Section 25299.56 of, the Health and Safety Code, relating to underground storage tanks.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 25281 of the Health and Safety Code is amended to read:

25281. For purposes of this chapter, the following definitions apply:

(a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, which alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism which alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and which detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

(c) (1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency which has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, the UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404. The UPAs also have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce the regulations adopted to implement the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant thereto.

(d) "Department" means the Department of Toxic Substances Control.

(e) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(f) "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(g) "Hazardous substance" means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(h) "Local agency" means the local agency authorized, pursuant to Section 25283, to implement this chapter.

(i) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(j) "Owner" means the owner of an underground storage tank.

(k) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(*l*) "Pipe" means any pipeline or system of pipelines which is used in connection with the storage of hazardous substances and which is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(m) "Primary containment" means the first level of containment, such as the portion of a tank which comes into immediate contact on its inner surface with the hazardous substance being contained.

(n) "Product tight" means impervious to the substance which is contained, or is to be contained, so as to prevent the seepage of the substance from the primary containment. To be product tight, the tank shall not be subject to physical or chemical deterioration by the substance which it contains over the useful life of the tank.

(o) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(p) "Secondary containment" means the level of containment external to, and separate from, the primary containment.

(q) "Single walled" means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(r) "Special inspector" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(s) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. "Storage" or "store" does not mean the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(t) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials (e.g. wood, concrete, steel, plastic) which provides structural support.

(u) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(v) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

(w) "Unauthorized release" means any release of any hazardous substance which does not conform to this chapter, including, but not limited to, an unauthorized release specified in Section 25295.5, unless this release is authorized by the board or a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(x) (1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank which is located on a farm or at the residence of a person, which has a capacity of 1,100 gallons or less, and which stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. Sumps which are a part of a monitoring system required under Section 25291 or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(y) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(z) (1) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land which are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) "Unified program facility permit" means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and which encompasses the permitting requirements of Section 25284.

(3) "Permit" means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

SEC. 2. Section 25299.10 of the Health and Safety Code is amended to read:

25299.10. (a) This chapter shall be known, and may be cited, as the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989.

(b) The Legislature hereby finds and declares all of the following:

(1) In order to help ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment and provides for the rapid distribution of cleanup funds that will assist the state's recovery, it is in the best interest of the public that the board devote maximum effort to the expedited processing and payment of all claims filed pursuant to Sections 25299.57 and 25299.58.

(2) It is estimated that approximately 90 percent of the underground storage tanks in the state contain petroleum and the remaining 10 percent of the tanks contain various chemical constituents.

(3) Although the exact extent of the problem is unknown, it is thought that a significant number of the underground storage tanks containing petroleum in the state may be leaking.

(4) In recent years, owners or operators of underground storage tanks have been unable to obtain affordable environmental impairment liability insurance coverage to pay for corrective action or the obtainable coverage has been outside their financial means.

(5) There are long-term threats to public health and water quality if a comprehensive, uniform, and efficient corrective action program is not established.

(6) It is in the best interest of the health and safety of the people of the state to establish a fund to pay for corrective action where coverage is not available.

(7) A uniform, comprehensive, and efficient program establishing financial responsibility and corrective action requirements for leaking underground storage tanks containing petroleum will enable private commercial insurers to expand the availability and affordability of insurance coverage.

(8) An efficient program of establishing corrective action requirements and funds or insurance coverage should encourage corrective action to be taken in the first instance by the owner or operator of the leaking underground storage tank containing petroleum.

(9) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(10) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to Chapter 6.7 (commencing with Section 25280), to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

(11) It is in the public interest for the state to provide financial assistance to small businesses and farms which have limited financial resources, to ensure timely compliance with the law governing underground storage tanks, and to ensure the adequate protection of groundwater.

(12) Nothing in this chapter shall be construed as waiving any immunity provided the state or its departments and agencies by the United States Constitution.

SEC. 3. Section 25299.11.5 is added to the Health and Safety Code, to read:

25299.11.5. "Adjudicative proceeding" has the same meaning as defined in Section 11405.20 of the Government Code.

SEC. 4. Section 25299.13 of the Health and Safety Code is amended to read:

25299.13. "Claim" means a written request for payment of costs eligible for reimbursement from the fund.

SEC. 5. Section 25299.23.1 of the Health and Safety Code is amended to read:

25299.23.1. (a) "Site" means the parcel of real property at which an underground storage tank is located.

(b) If underground storage tanks are located at adjacent parcels of real property, the adjacent parcels together constitute one site if both of the following apply:

(1) The underground storage tanks are, or have been, operated by the same person.

(2) The adjacent parcels are under common ownership or control.

(c) Notwithstanding subdivision (a), the board may consider a parcel of real property as consisting of multiple sites, corresponding

to the number of distinct underground storage tank operations at the parcel, if the board makes both of the following findings:

(1) There is more than one underground storage tank located at the parcel.

(2) Each separately operated underground storage tank or group of underground storage tanks is not, and has not been, operated by a person who is operating or has operated another underground storage tank at the same parcel.

SEC. 6. Section 25299.24 of the Health and Safety Code is amended to read:

25299.24. "Tank", "underground storage tank," "underground tank system," and "tank system" have the same meaning as defined in Chapter 6.7 (commencing with Section 25280), except that "tank", "underground storage tank," "underground tank system," and "tank system" mean only those tanks that are defined as petroleum underground storage tanks under the federal act.

SEC. 7. Section 25299.37 of the Health and Safety Code is amended to read:

25299.37. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this article and regulations adopted pursuant to Section 25299.77. In adopting regulations pursuant to Section 25299.77, the board shall develop corrective action requirements for health hazards and protection of the environment, based on the severity of the health hazards and the other factors listed in subdivision (b).

(b) Any corrective action conducted pursuant to this chapter shall ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) (1) When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, direction, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a work plan that details the corrective action the owner, operator, or other responsible party shall take to comply with the

requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.77.

(2) The work plan required by paragraph (1) shall be prepared in accordance with the regulations adopted pursuant to Section 25299.77. The work plan shall include a schedule and timeline for corrective action.

(3) At the request of the owner, operator, or other responsible party, the local agency, the board, or the regional board shall review a work plan prepared pursuant to paragraph (1) and either accept the work plan, if it meets the requirements of this section, or disapprove the work plan if it does not meet those requirements. If the local agency, board, or the regional board accepts the work plan, it shall indicate to the owner, operator, or other responsible party, the actions or other elements of the work plan that are, in all likelihood, adequate and necessary to meet the requirements of this section, and the actions and elements that may be unnecessary. If the local agency, board, or regional board disapproves the work plan, it shall state the reasons for the disapproval.

(4) In the interests of minimizing environmental contamination and promoting prompt cleanup, the responsible party may begin implementation of the proposed actions after the work plan has been submitted but before the work plan has received regulatory agency acceptance, except that implementation of the work plan may not begin until 60 calendar days from the date of submittal, unless the responsible party is otherwise directed in writing by the regulatory agency. However, before beginning implementation pursuant to this paragraph, the responsible party shall notify the regulatory agency of the intent to initiate proposed actions set forth in the submitted work plan.

(5) The owner, operator, or other responsible party shall conduct corrective actions in accordance with the work plan approved pursuant to the section.

(6) (A) The local agency, the board, or the regional board shall advise and work with the owner, operator, or other responsible party on the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations or any successor regulation. Regional board staff and local agency staff shall work with the responsible party and fund staff to obtain preapproval for the responsible party. The fund staff shall grant or deny a request for preapproval within 30 calendar days after the date a request is received. If fund staff denies a request for preapproval or fails to act within 30 calendar days after receiving the request, an owner, operator, or other responsible party who has prepared a work plan that has been reviewed and accepted pursuant to paragraph (3), and is denied preapproval of corrective action costs for one or more of the actions required by the work plan, may petition the board for review of the request for preapproval. The board shall review the petition pursuant to Section 25299.56, and for that purpose

the petition for review of a request for preapproval of corrective action costs shall be reviewed by the board in the same manner as a petition for review of an unpaid claim.

(B) If the board receives a petition for review pursuant to subparagraph (A), the board shall review the request for preapproval and grant or deny the request pursuant to this subparagraph and subparagraph (C). The board shall deny the request for preapproval if the board makes one of the following findings:

(i) The petitioner is not eligible to file a claim pursuant to Article 6 (commencing with Section 25299.50).

(ii) The petitioner failed to submit one or more of the documents required by the regulations adopted by the board governing preapproval.

(iii) The petitioner failed to obtain three bids or estimates for corrective action costs and, under the circumstances pertaining to the corrective action, there is no valid reason to waive the three-bid requirement pursuant to the regulations adopted by the board.

(C) If the board does not deny the request for preapproval pursuant to subparagraph (B), the board shall grant the request for preapproval. However, the board may modify the request by denying preapproval of corrective action costs or reducing the preapproved amount of those costs for any action required by the work plan, if the board finds that the fund staff has demonstrated either of the following:

(i) The amount of corrective action reimbursement requested for the action is not reasonable. In determining if the fund staff has demonstrated that the amount of reimbursement requested for an action is not reasonable, the board shall use, when available, recent experience with bids or estimates for similar actions.

(ii) The action required in the work plan is, in all likelihood, not necessary for the corrective action to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.77.

(7) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this article, it shall inform the responsible party of its right to request the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.

(d) Notwithstanding Section 25297.1, the board shall implement a procedure that does not assess an owner, operator, or responsible party taking corrective action pursuant to this chapter for the costs of a local oversight program pursuant to paragraph (4) of subdivision (d) of Section 25297.1. The board shall institute an internal procedure for assessing, reviewing, and paying those costs directly between the

board and the local agency. At least 15 days before the board proposes to disapprove a claim for corrective action costs which have been incurred on the grounds that the costs were unreasonable or unnecessary, the board shall issue a notice advising the claimant and the lead agency of the proposed disallowance, to allow review and comment.

(e) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(f) Until the board adopts regulations pursuant to Section 25299.77, the owner, operator, or other responsible party shall take corrective action in accordance with Chapter 6.7 (commencing with Section 25280) and the federal act.

(g) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the regional board or the local agency may undertake or contract for corrective action and recover costs pursuant to Section 25299.70.

(h) The following uniform closure letter shall be issued to the owner, operator or other responsible party taking corrective action at an underground storage tank site by the local agency or the regional board with jurisdiction over the site, or the board, upon a finding that the underground storage tank site is in compliance with the requirements of subdivisions (a) and (b) and with any corrective action regulations adopted pursuant to Section 25299.77 and that no further corrective action is required at the site:

"[Case File Number]

Dear [Responsible Party]

This letter confirms the completion of a site investigation and corrective action for the underground storage tank(s) formerly located at the above–described location. Thank you for your cooperation throughout this investigation. Your willingness and promptness in responding to our inquiries concerning the former underground storage tank(s) are greatly appreciated.

Based on information in the above–referenced file and with the provision that the information provided to this agency was accurate and representative of site conditions, this agency finds that the site investigation and corrective action carried out at your underground storage tank(s) site is in compliance with the requirements of subdivisions (a) and (b) of Section 25299.37 of the Health and Safety Code and with corrective action regulations adopted pursuant to Section 25299.77 of the Health and Safety Code and that no further action related to the petroleum release(s) at the site is required.

This notice is issued pursuant to subdivision (h) of Section 25299.37 of the Health and Safety Code.

Please contact our office if you have any questions regarding this matter.

Sincerely,

[Name of Board Executive Director, Regional Board Executive Officer, or Local Agency Director]"

SEC. 8. Section 25299.38 of the Health and Safety Code is repealed.

SEC. 9. Section 25299.39 of the Health and Safety Code is amended to read:

25299.39. (a) (1) Unless the board, in consultation with local agencies and the regional board determines that a site is an emergency site, the board, at the request of an eligible responsible party, may suspend additional corrective action or investigation work at a site, based on a preliminary site assessment conducted in accordance with the regulations adopted by the board implementing Section 25299.37, but the board shall not suspend any of the following activities pursuant to this section:

(A) Removal of, or approved modifications of, existing tanks.

(B) Excavation of petroleum saturated soil or removal of excess petroleum from saturated soil.

(C) Removal of free product from the saturated and unsaturated zones.

(D) Periodic monitoring to ensure that released petroleum is not migrating in an uncontrolled manner that will cause the site to become an emergency site.

(2) For purposes of this subdivision, "emergency site" means a site that, because of an unauthorized release of petroleum, meets one of the following conditions:

(A) The site presents an imminent threat to public health or safety or the environment.

(B) The site poses a substantial probability of causing a condition of contamination or nuisance, as defined in Section 13050 of the Water Code, or of causing pollution of a source of drinking water at a level that is a violation of a primary or secondary drinking water standard adopted by the State Department of Health Services pursuant to Chapter 4 (commencing with Section 116270) of Part 12 of Division 104.

(b) The suspension shall continue until one of the following occurs:

(1) The board provides the eligible responsible party with a letter of commitment that the party will receive reimbursement for the corrective action.

(2) The responsible party requests in writing that the suspension be terminated and that the work continue.

(3) The fund is no longer in existence.

(c) The board shall adopt regulations that specify the conditions under which a site is an imminent threat to public health or safety or to the environment or poses a substantial probability of causing a condition of contamination, nuisance, or pollution as specified in paragraph (2) of subdivision (a). The board shall not suspend corrective action or investigation work at any site pursuant to this section until the effective date of the regulations adopted by the board pursuant to this subdivision.

SEC. 10. Section 25299.39.1 of the Health and Safety Code is amended to read:

25299.39.1. (a) The board shall develop, implement, and maintain a system for storing and retrieving data from cases involving discharges of petroleum from underground storage tanks to allow regulatory agencies and the general public to use historic data in making decisions regarding permitting, land use, and other matters. The system shall be accessible to government agencies and the general public. A site included in the data system shall be clearly designated as having no residual contamination if, at the time the site is closed or at any time after closure, the board determines that no residual contamination remains on the site.

(b) For purposes of this section, "residual contamination" means the petroleum that remains on a site after a corrective action has been carried out and the cleanup levels established by the corrective action plan for the site, pursuant to subdivision (g) of Section 2725 of Title 23 of the California Code of Regulations, have been achieved.

SEC. 11. Section 25299.39.2 of the Health and Safety Code is amended to read:

25299.39.2. (a) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by the tank owner or operator within 30 days of the notification. The manager, with approval of the tank owner or operator, may make a recommendation to the board for closure. The board may close the tank case or require the closure of a tank case at a site under the jurisdiction of a regional board or a local agency implementing a local oversight program under Section 25297.1 if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25299.37 and the corrective action regulations adopted pursuant to Section 25299.77. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program under Section 25297.1, the board may recommend to the local agency that the case be closed.

(b) (1) Any owner, operator, or other responsible party who has a tank case and who believes that the corrective action plan for the site has been satisfactorily implemented, but where closure has not been granted, may petition the board for a review of the case, whether or not the petitioner is eligible for reimbursement from the fund pursuant to Section 25299.54.

(2) Upon receipt of a petition pursuant to paragraph (1), the board may close the tank case or require closure, if the tank case is at a site under the jurisdiction of a regional board or a local agency that is implementing a local oversight program under Section 25297.1 and if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25299.37 and the corrective action regulations adopted pursuant to Section 25299.77. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program pursuant to Section 25297.1, the board may recommend to the local agency that the tank case be closed.

(c) Any aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subdivision (a) or (b), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(d) The authority provided under this section does not limit a person's ability to petition the board for review under any other state law.

SEC. 12. Section 25299.51 of the Health and Safety Code is amended to read:

25299.51. The board may expend the money in the fund for all of the following purposes:

(a) In addition to the purposes specified in subdivisions (c), (d), and (e), for expenditure by the board for the costs of implementing this chapter, which shall include costs incurred by the board pursuant to Article 8.5 (commencing with Section 25299.80.1).

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of the regional board or local agency for corrective action pursuant to Section 25299.36, up to one million dollars ($1,000,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of the regional board or the local agency for corrective action pursuant to subdivision (g) of Section 25299.37.

(i) To pay claims pursuant to Section 25299.58.

SEC. 13. Section 25299.52 of the Health and Safety Code is amended to read:

25299.52. (a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks which are either of the following:

(A) An owner or operator of a tank that is a small business, by meeting the requirements of subdivision (d) of Section 14837 of the Government Code. An owner or operator which meets that definition of small business, but who is domiciled or has its principle office outside of the state, shall be classified in this category if the owner or operator otherwise meet the requirements of subdivision (d) of Section 14837 of the Government Code with regard to the number of employees and the total annual revenues received.

(B) An owner or operator which is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars ($7,000,000). In determining the amount of a nonprofit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located.

(3) Owners or operators of tanks which are either of the following:

(A) The owner or operator owns and operates a business which employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(B) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, the board shall calculate only those employees employed at the particular site at which the tank or tanks for which the claim is submitted are located.

(4) All other tank owners and operators.

(c) (1) In any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.

(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.

(d) The board shall give priority to a claim that is filed before September 24, 1993, by a city, county, or district that is eligible for payment pursuant to Section 25299.54 in the following manner:

(1) The board shall determine whether the priority category specified for a city, county, or district pursuant to subparagraph (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph (3), of subdivision (b) requires that the priority ranking of the claim be changed.

(2) If the priority ranking of the claim is changed and the claim is placed into either the priority category specified in subparagraph (B) of paragraph (2), or specified in subparagraph (B) of paragraph (3), of subdivision (b), the board shall pay all other claims that were assigned to that priority category prior to September 24, 1993, before paying the claim of the city, county, or district.

(e) The board may, to carry out the intent specified in paragraph (1) of subdivision (b) of Section 25299.10 and to expedite the processing and awarding of claims pursuant to Sections 25299.57 and 25299.58, implement the contracting procedures required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, as may be necessary, to alleviate the claims processing and award backlog. If, at the conclusion of any fiscal year, 25 percent or more of the funds appropriated annually for awards to claimants during that year have not actually been obligated by the board, the board shall, at its next regularly scheduled meeting, determine, in a public hearing, whether, given the circumstances of the awards backlog, it is appropriate to implement those contracting procedures for some, or all, of the claims filed with the board.

(f) For purposes of this section, the following definitions shall apply:

(1) "Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

(2) "Annual revenue," with respect to public entities, means the total annual general purpose revenues, excluding all restricted revenues over which the governing agency has no discretion, as reported in the Annual Report of Financial Transactions submitted to the Controller, for the latest fiscal year ending prior to the date the fund reimbursement claim application was filed.

(3) "Annual revenue," with respect to nonprofit organizations, means the total annual revenues, as shown in an annual fiscal report filed with the Registry of Charitable Trusts of state and federal tax records, based on the latest fiscal year ending prior to the date the fund reimbursement claim application was filed.

(4) "General purpose revenues," as used in paragraph (2), means revenues consisting of all of the following: secured and unsecured revenues; less than countywide funds, secured and unsecured; prior year secured and unsecured penalties and delinquent taxes; sales and use taxes; transportation taxes (nontransit); property transfer taxes; transient lodging taxes; timber yield taxes; aircraft taxes; franchise taxes; fines, forfeitures, and penalties; revenues from use of money and property; motor vehicle in-lieu taxes; trailer coach in-lieu taxes;

homeowner property tax relief; open-space tax relief; and cigarette taxes.

SEC. 14. Section 25299.53 of the Health and Safety Code is amended to read:

25299.53. (a) A regional board or a local agency taking, or contracting for, corrective action pursuant to subdivision (g) of Section 25299.37 shall, before commencing the corrective action, take both of the following actions:

(1) The regional board or local agency shall notify the board of the planned corrective action. If an owner, operator, or other responsible party is taking the corrective action in accordance with Section 25299.37, the regional board or local agency shall not initiate a corrective action pursuant to this chapter.

(2) If an owner, operator, or other responsible party is not taking or has not taken the action specified in paragraph (1), the regional board or local agency shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate. The regional board or local agency shall obtain approval of the corrective action and the cost estimate before taking, or contracting for, any corrective action.

(b) If the board approves the request of the regional board or local agency made pursuant to paragraph (2) of subdivision (a), the board shall, after making the determination specified in subdivision (c), pay for the costs of corrective action performed by a regional board, local agency, or qualified contractor.

(c) The board shall not make any payment pursuant to subdivision (b) unless the board determines that the owner, operator, or other responsible party of the tank has failed or refused to comply with a final order for corrective action issued pursuant to Section 25299.37 with respect to the unauthorized release of petroleum from the tank.

(d) Upon making any payment to a regional board or local agency pursuant to subdivision (b), the board shall recover the amount of payment pursuant to Section 25299.70.

SEC. 15. Section 25299.54 of the Health and Safety Code is amended to read:

25299.54. (a) Except as provided in subdivisions (b), (c), (d), (e), and (g), an owner or operator, required to perform corrective action pursuant to Section 25299.37, or an owner or operator who, as of January 1, 1988, is required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code, who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, or Chapter 6.7 (commencing with Section 25280), may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) A person who has failed to comply with Article 3 (commencing with Section 25299.30) is ineligible to file a claim pursuant to this section.

(c) Any owner or operator of an underground storage tank containing petroleum is ineligible to file a claim pursuant to this section if the person meets both of the following conditions:

(1) The person knew, before January 1, 1988, of the unauthorized release of petroleum which is the subject of the claim.

(2) The person did not initiate, on or before June 30, 1988, any corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code concerning the release, or the person did not, on or before June 30, 1988, initiate corrective action in accordance with Chapter 6.7 (commencing with Section 25280) or the person did not initiate action on or before June 30, 1988, to come into compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code concerning the release.

(d) An owner or operator who violates Article 4 (commencing with Section 25299.36) is liable for any corrective action costs that result from the owner's or operator's violation of Article 4 (commencing with Section 25299.36) and is ineligible to file a claim pursuant to this section.

(e) Notwithstanding this chapter, a person who owns a tank located underground that is used to store petroleum may apply to the board for satisfaction of a claim, and the board may pay the claim pursuant to Section 25299.57 without making the findings specified in paragraph (3) of subdivision (d) of Section 25299.57 if all of the following apply:

(1) The tank meets one of the following requirements:

(A) The tank is located at the residence of a person on property used exclusively for residential purposes at the time of discovery of the unauthorized release of petroleum.

(B) The tank owner demonstrates that the tank is located on property which, on and after January 1, 1985, is not used for agricultural purposes, the tank is of a type specified in subparagraph (B) of paragraph (1) of subdivision (x) of Section 25281, and the petroleum in the tank is used solely for the purposes specified in subparagraph (B) of paragraph (1) of subdivision (x) of Section 25281 on and after January 1, 1985.

(2) The tank is not a tank described in subparagraph (A) of paragraph (1) of subdivision (x) of Section 25281 and the tank is not used on or after January 1, 1985, for the purposes specified in that subparagraph.

(3) The claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280), or the claimant is not subject to the requirements of those provisions.

(f) Whenever the board has authorized the prepayment of a claim pursuant to Section 25299.57, and the amount of money available in the fund is insufficient to pay the claim, the owner or operator shall remain obligated to undertake the corrective action in accordance with Section 25299.37.

(g) The board shall not reimburse a claimant for any eligible costs for which the claimant has been, or will be, compensated by another person. This subdivision does not affect reimbursement of a claimant from the fund under either of the following circumstances:

(1) The claimant has a written contract, other than an insurance contract, with another person that requires the claimant to reimburse the person for payments the person has provided the claimant pending receipt of reimbursement from the fund.

(2) An insurer has made payments on behalf of the claimant pursuant to an insurance contract and either of the following apply:

(A) The insurance contract explicitly coordinates insurance benefits with the fund and requires the claimant to do both of the following:

(i) Maintain the claimant's eligibility for reimbursement of costs pursuant to this chapter by complying with all applicable eligibility requirements.

(ii) Reimburse the insurer for costs paid by the insurer pending reimbursement of those costs by the fund.

(B) The claimant received a letter of commitment prior to June 30, 1999, for the occurrence and the claimant is required to reimburse the insurer for any costs paid by the insurer pending reimbursement of those costs by the fund.

(h) The Legislature finds and declares that the changes made to subparagraph (A) of paragraph (1) of subdivision (e) by Chapter 1290 of the Statutes of 1992 is declaratory of existing law.

(i) The Legislature finds and declares that the amendment of subdivisions (a) and (g) by the act amending this section during the 1999–2000 Regular Session is declaratory of existing law.

SEC. 16. Section 25299.56 of the Health and Safety Code is repealed.

SEC. 17. Section 25299.56 is added to the Health and Safety Code, to read:

25299.56. (a) The board shall determine an applicant's eligibility for a claim for corrective action costs or third-party compensation costs pursuant to Section 25299.57 or 25299.58 and notify the applicant of that determination within 60 days from the date of the receipt of the claim application. The board may classify the claimant's application pursuant to Section 25299.52 after that 60-day period. If the board sends an applicant a determination of eligibility pursuant to this subdivision, the board shall not revoke that determination of eligibility, unless the application contained fraudulent information or a misrepresentation. However, the board may suspend making a reimbursement for a claim until the claimant corrects any

deficiencies that are the basis for the suspension. Reinstatement of reimbursement shall occur when funds are available and that reinstatement shall be made ahead of any new letters of commitment issued as of the date of reinstatement.

(b) A claimant may request review of any claim or portion of a claim not paid. The review shall be conducted and a decision rendered within 30 days from the date of receipt of the request.

(c) A claimant may file a petition for review, in writing, with the board with regard to any unpaid claim that is unresolved to the satisfaction of the claimant upon expiration of the 30-day period specified in subdivision (b) and the board shall take final action on the petition within 90 days of the board's receipt of a complete petition for review, except that if the board initiates an adjudicative proceeding on the petition, the board shall take final action within 270 days of the board's receipt of a complete petition for review.

(d) Final action on a petition taken by the board is a final agency action for the purposes of judicial review of a board decision.

(e) A claimant may, not later than 30 days from the date of final action by the board pursuant to subdivision (c), file with the superior court a petition for writ of mandate for review of the decision. If the claimant does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by the court. Section 1094.5 of the Code of Civil Procedure shall govern the proceeding for a petition filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(f) Except as specified in subdivision (g), the procedures in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to any adjudicative proceedings conducted by the board pursuant to this article.

(g) (1) Notwithstanding subdivision (f), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to any adjudicative proceeding conducted by the board pursuant to this article.

(2) This section is not a limitation on the authority of the board to authorize the use of the procedure provided in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 18. Section 25299.57 of the Health and Safety Code is amended to read:

25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of a corrective action that exceeds the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars ($1,000,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform

corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article. It is the intent of the Legislature that claimants applying for satisfaction of claims from the fund be notified of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment that will obligate funds for reimbursement follow the notice of eligibility as soon thereafter as possible.

(b) (1) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary.

(2) The board shall not reject any actual costs of corrective action in a claim solely on the basis that the invoices submitted fail to sufficiently detail the actual costs incurred, if all of the following applies:

(A) Auxiliary documentation is provided which documents to the board's satisfaction that the invoice is for necessary corrective action work.

(B) The costs of corrective action work in the claim are reasonably commensurate with similar corrective action work performed during the same time period covered by the invoice for which reimbursement is sought.

(C) The invoices include a brief description of the work performed, the date that the work was performed, the vendor, and the amount.

(c) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(d) Except as provided in subdivision (j), a claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all current underground storage tank fees imposed pursuant to Section 25299.41 and all prior fees due on and after January 1, 1991.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a claim for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) Any claimant who submits a claim to the board for the payment of professional engineering and geologic work shall submit

multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.77. The claimant's selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate conforms with the range of acceptable costs established by the board.

(3) Any claimant who submits a claim for payment to the board for remediation construction contracting work shall submit multiple bids, as required in the regulations adopted by the board pursuant to Section 25299.77.

(4) Paragraphs (1), (2), and (3) do not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

(h) The board shall provide, upon the request of a claimant, assistance to the claimant in the selection of contractors retained by the claimant to conduct reimbursable work related to corrective actions. The board shall develop a summary of expected costs for common remedial actions. This summary of expected costs may be used by claimants as a guide in the selection and supervision of consultants and contractors.

(i) The board shall pay, within 60 days from the date of receipt of an invoice of expenditures, all costs specified in the work plan developed pursuant to Section 25299.37, and all costs which are otherwise necessary to comply with an order issued by a local, state, or federal agency.

(j) (1) The board shall pay a claim of not more than three thousand dollars ($3,000) per occurrence for regulatory technical assistance to an owner or operator who is otherwise eligible for reimbursement under this chapter.

(2) For the purposes of this subdivision, regulatory technical assistance is limited to assistance from a person, other than the claimant, in the preparation and submission of a claim to the fund. Regulatory technical assistance does not include assistance in connection with proceedings under Section 25299.39.2 or 25299.56 or any action in court.

(k) (1) Notwithstanding any other provision of this section, the board shall pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank which has been the subject of a completed corrective action and for which additional corrective action is required because of additionally discovered contamination from the previous release, only if the person who carried out the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to subdivision (b), and only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of reimbursement authorized by

subdivision (a). Reimbursement to a claimant on a reopened site shall occur when funds are available, and reimbursement commitment shall be made ahead of any new letters of commitment to be issued, as of the date of the reopening of the claim, if funding has occurred on the original claim, in which case funding shall occur at the time it would have occurred under the original claim.

(2) For purposes of this subdivision, a corrective action is completed when the local agency or regional board with jurisdiction over the site or the board issues a closure letter pursuant to subdivision (h) of Section 25299.37.

SEC. 19. Section 25299.59 of the Health and Safety Code is amended to read:

25299.59. (a) If the board has paid out of the fund for any costs of corrective action, the board shall not pay any other claim out of the fund for the same costs.

(b) Notwithstanding Sections 25299.57 and 25299.58, the board shall not reimburse or authorize prepayment of any claim in an aggregate amount exceeding one million dollars ($1,000,000), less the minimum level of financial responsibility specified in Section 25299.32, for a claim arising from the same event or occurrence.

(c) The board may conduct an audit of any corrective action claim honored pursuant to this chapter. The claimant shall reimburse the state for any costs disallowed in the audit. A claimant shall preserve, and make available, upon request of the board or the board's designee, all records pertaining to the corrective action claim for a period of three years after the final payment is made to the claimant.

SEC. 20. Section 25299.62 is added to the Health and Safety Code, to read:

25299.62. All claims that are approved shall be forwarded to the Controller within 10 days from the date of approval, for payment by the Controller.

SEC. 21. Section 25299.63 is added to the Health and Safety Code, to read:

25299.63. This article does not require any person to pursue a claim against the board pursuant to this article before seeking any other remedy. This section does not affect the requirement for exhaustion of administrative remedies before obtaining judicial review of any action of the board on a claim or petition for closure of a tank case.

SEC. 22. 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.

CHAPTER 329

An act to amend Section 3482.6 of the Civil Code, to amend Sections 19213, 19300, 19302, 19304, 19305, 19306, and 19447 of, and to add Section 19300.5 to, the Food and Agricultural Code, relating to animal rendering.

[Approved by Governor September 3, 1999. Filed with Secretary of State September 3, 1999.]

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

SECTION 1. Section 3482.6 of the Civil Code is amended to read:

3482.6. (a) No agricultural processing activity, operation, facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in continuous operation for more than three years if it was not a nuisance at the time it began.

(b) If an agricultural processing activity, operation, facility, or appurtenances thereof substantially increases its activities or operations after January 1, 1993, then a public or private nuisance action may be brought with respect to those increases in activities or operations that have a significant effect on the environment. For increases in activities or operations that have been in effect more than three years, there is a rebuttable presumption affecting the burden of producing evidence that the increase was not substantial.

(c) This section does not supersede any other provision of law, except other provisions of this part, if the agricultural processing activity, operation, facility, or appurtenances thereof, constitute a nuisance, public or private, as specifically defined or described in the provision.

(d) This section prevails over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state, except regulations adopted pursuant to Section 41700 of the Health and Safety Code as applied to agricultural processing activities, operations, facilities, or appurtenances thereof that are surrounded by housing or commercial development on January 1, 1993. However, nothing in this section precludes a city, county, city and county, or other political subdivision of this state, acting within its constitutional or statutory authority and not in conflict with other provisions of state law, from adopting an ordinance that allows notification to a prospective homeowner that the dwelling is in close proximity to an agricultural processing activity, operation, facility, or appurtenances thereof and is subject to provisions of this section consistent with Section 1102.6a.

(e) For the purposes of this section, the following definitions apply:

(1) "Agricultural processing activity, operation, facility, or appurtenances thereof" includes, but is not limited to rendering plants licensed pursuant to Section 19300 of the Food and Agricultural Code and collection centers licensed pursuant to Section 19300.5 of the Food and Agricultural Code, the canning or freezing of agricultural products, the processing of dairy products, the production and bottling of beer and wine, the processing of meat and egg products, the drying of fruits and grains, the packing and cooling of fruits and vegetables, and the storage or warehousing of any agricultural products, and includes processing for wholesale or retail markets of agricultural products.

(2) "Continuous operation" means at least 30 days of agricultural processing operations per year.

(3) "Proper and accepted customs and standards" means the compliance with all applicable state and federal statutes and regulations governing the operation of the agricultural processing activity, operation, facility, or appurtenances thereof with respect to the condition or effect alleged to be a nuisance.

(f) This section does not apply to any litigation pending or cause of action accruing prior to January 1, 1993.

SEC. 2. Section 19213 of the Food and Agricultural Code is amended to read:

19213. "Rendering" means the recycling, processing, and conversion of animal and fish byproducts and carcasses from the meat, poultry, and seafood industries, as well as used kitchen grease into fats, oils, and proteins that are used primarily as feed in the animal, poultry, and pet food industries.

SEC. 3. Section 19300 of the Food and Agricultural Code is amended to read:

19300. Every person engaged in the business of rendering shall obtain a license from the department for each rendering plant.

SEC. 4. Section 19300.5 is added to the Food and Agricultural Code, to read:

19300.5. Every person engaged in the business of operating a collection center shall obtain a license from the department for each collection center operated.

SEC. 5. Section 19302 of the Food and Agricultural Code is amended to read:

19302. The department, after notice and hearing, may refuse to issue a license unless the department finds that the applicant satisfies both of the following:

(a) Is properly equipped to engage in the business of rendering or operating a collection center. For these purposes, the department shall consult with the rendering industry to determine the equipment that shall be required.

(b) Has never been convicted of a felony involving adulterated or misbranded food.

SEC. 6. Section 19304 of the Food and Agricultural Code is amended to read:

19304. All records required to be retained pursuant to this chapter shall be maintained at the regular place of business of every renderer and collection center operator licensed pursuant to this article and every transporter registered pursuant to Article 6.5 (commencing with Section 19310). Those records shall be exhibited on demand to any peace officer of this state or any employee of the department.

SEC. 7. Section 19305 of the Food and Agricultural Code is amended to read:

19305. Any peace officer of this state, or any employee of the department, during normal business hours, may inspect any premises maintained by a renderer or collection center operator licensed pursuant to this article or a transporter registered pursuant to Article 6.5 (commencing with Section 19310), and any inedible kitchen grease located on the premises, for the purpose of determining whether that renderer, collection center operator, or transporter is complying with the record maintenance requirements of this article.

SEC. 8. Section 19306 of the Food and Agricultural Code is amended to read:

19306. (a) Any renderer or collection center operator licensed pursuant to this article or transporter registered pursuant to Article 6.5 (commencing with Section 19310) who fails in any respect to keep the written records required by this article, or to set out in that written record any matter required by this article to be set out in the record, is guilty of a misdemeanor.

(b) Every renderer, collection center operator, or transporter who refuses, upon demand of any peace officer of this state or any employee of the department, to exhibit any written record required by this article, or who destroys that record within one year after making the final entry of any information required by this article, is guilty of a misdemeanor.

(c) Any violation of subdivision (b) is punishable as follows:

(1) For a first offense, by a fine of not less than five hundred dollars ($500), or by imprisonment in a county jail for not more than 30 days, or by both the fine and imprisonment.

(2) For a second offense within a period of one year, by a fine of not less than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than 30 days, or by both the fine and imprisonment. In addition to any other punishment imposed pursuant to this paragraph, the court may order the defendant to stop engaging in the business as a renderer, collection center operator, or transporter for a period not to exceed 30 days.

(3) For a third or any subsequent offense within a period of two years, by a fine of not less than two thousand dollars ($2,000), or by

imprisonment in a county jail for not more than six months, or by both the fine and imprisonment. In addition to any other sentence imposed pursuant to this paragraph, the court shall order the defendant to stop engaging in the business as a renderer, collection center operator, or transporter for a period of 30 days.

SEC. 9. Section 19447 of the Food and Agricultural Code is amended to read:

19447. (a) In lieu of any civil action pursuant to Section 19445, and in lieu of seeking prosecution, the secretary may levy a civil penalty against a person who violates Article 6 (commencing with Section 19300), Article 6.5 (commencing with Section 19310), or any regulation adopted pursuant to those articles, in an amount not to exceed one thousand dollars ($1,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be granted the opportunity to review the department's evidence and, for up to 30 days following the issuance of the notice, the opportunity to present written argument and evidence to the department as to why the civil penalty should not be imposed or should be reduced from the amount specified in the penalty notice. Notwithstanding Chapter 4.5 (commencing with Section 11400) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2 of the Government Code or any other provision of law, this section does not require the department to conduct either a formal or informal hearing. The department instead may dispose of the matter upon review of the documentation presented.

(c) Any person upon whom a civil penalty is levied may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal.

(2) Any party, at the time of filing the appeal, or within 10 days thereafter, may present written evidence and a written argument to the secretary.

(3) The secretary may grant oral arguments upon application made at the time written arguments are made.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the secretary and the person appealing the penalty.

(5) The secretary shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal, or within 15 days of the date of oral arguments. A copy of the secretary's decision shall be delivered or mailed to the appellant.

(7) The secretary may sustain the decision, modify the decision by reducing the amount of the penalty levied, or reverse the decision.

(8) A review of the decision of the secretary may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) Any penalties levied by the secretary pursuant to this section shall be deposited in the General Fund.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 330

An act to amend, repeal, and add Section 40000.13 of, and to add and repeal Sections 5205.5 and 21655.9 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

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

(a) The federal Clean Air Act Amendments of 1990 (Public Law 101-549) sought to accelerate the deployment of inherently low emission vehicles (ILEVs) through the use of nonmonetary incentives in areas that do not meet federal ambient air quality standards.

(b) Federal regulations to implement these federal Clean Air Act Amendments were adopted by the United States Environmental Protection Agency in 1993, and are set forth in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations. These federal regulations direct states to exempt federally certified and labeled ILEVs in fleets from high-occupancy vehicle (HOV) restrictions for single-occupant vehicles (Sec. 88.313-93, Title 40, C.F.R.). Five years later, California has not yet conformed to those federal regulations.

(c) In addition to these federal requirements pertaining to ILEVs in fleets the Transportation Equity Act for the 21st Century (Public Law 105-178), commonly known as TEA-21, encourages and permits states to extend the HOV lane access exemption to nonfleet owners of ILEVs.

(d) In most instances, existing HOV lanes in California are uncongested and underutilized, resulting in less than optimal traffic flow. Traffic flow efficiency and air quality would, therefore, be improved by an exemption for ILEVs from the HOV lane access restrictions in these uncongested HOV lanes.

(e) The federal regulations provide a mechanism for California and other states to remove congested HOV lanes, or portions thereof, from having access by single-occupant ILEVs, thus guaranteeing that ILEVs cannot be a cause of congestion in HOV lanes.

(f) The federal regulations affirm a state's authority to establish ILEV identification requirements, in addition to the EPA requirements, that are necessary and appropriate to facilitate enforcement.

(g) California's urban air quality is the worst of any state in the United States, with over 80 percent of our population living in areas that do not meet federal or state ambient air quality standards, and approximately 75 percent of our urban smog coming from mobile sources, primarily light-duty cars and trucks.

(h) The people of California want and need healthful air quality, and are well served by incentive-based approaches to encourage early deployment of cleaner vehicles at little or no cost to the state.

SEC. 2. Section 5205.5 is added to the Vehicle Code, to read:

5205.5. (a) For the purposes of implementing Section 21655.9, beginning July 1, 2000, and through December 31, 2003, the department, in consultation with the Department of the California Highway Patrol, shall make available for issuance, for a fee determined by the department to be sufficient to reimburse the department for actual costs incurred pursuant to this section, distinctive decals, labels, or other identifiers for vehicles that meet California's ultra-low emission vehicle (ULEV) standard for exhaust emissions and the federal ILEV evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations, in a manner that clearly distinguishes them from other vehicles.

(b) For the purposes of implementing Section 21655.9, beginning January 1, 2004, and through December 31, 2007, the department shall make available for issuance, for a fee determined by the department to be sufficient to reimburse the department for actual costs incurred pursuant to this section, distinctive decals, labels, and other identifiers for vehicles that meet California's super ultra-low emission vehicle (SULEV) standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations, in a manner that clearly distinguishes them from other vehicles.

(c) The department shall include a summary of the provisions of this section on each motor vehicle registration renewal notice, or on

a separate insert, if space is available and the summary can be included without incurring additional printing or postage costs.

(d) The Governor may remove individual high-occupancy vehicle (HOV) lanes, or portions of those lanes, during periods of peak congestion from the ILEV access provisions provided in subdivisions (a) and (b), following a finding by the Department of Transportation as follows:

(1) The lane, or portion thereof, exceeds a level of service C, as discussed in subdivision (b) of Section 65089 of the Government Code.

(2) The operation or projected operation of the vehicles described in subdivisions (a) and (b) in these lanes, or portions thereof, will significantly increase congestion.

The finding also shall demonstrate the infeasibility of alleviating the congestion by other means, including, but not limited to, reducing the use of the lane by noneligible vehicles, further increasing vehicle occupancy, or adding additional capacity.

(e) For purposes of subdivisions (a) and (b), the Department of the California Highway Patrol shall design and specify the placement of the decal, label, or other identifier on the vehicle. Each decal, label, or other identifier issued for a vehicle shall display a unique number, which number shall be printed on, or affixed to, the vehicle registration.

(f) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 3. Section 21655.9 is added to the Vehicle Code, to read:

21655.9. (a) Whenever the Department of Transportation authorizes or permits exclusive or preferential use of highway lanes or highway access ramps for high-occupancy vehicles pursuant to Section 21655.5, the use of those lanes or ramps shall also be extended to vehicles that are issued distinctive decals, labels, or other identifiers pursuant to Section 5205.5 regardless of vehicle occupancy or ownership.

(b) No person shall drive a vehicle described in subdivisions (a) and (b) of Section 5205.5 with a single occupant upon a high-occupancy vehicle lane pursuant to this section unless the decal, label, or other identifier issued pursuant to Section 5205.5 are properly displayed on the vehicle, and the vehicle registration described in Section 5205.5 is with the vehicle.

(c) No person shall operate or own a vehicle displaying a decal, label, or other identifier, as described in Section 5205.5, if that decal, label, or identifier was not issued for that vehicle pursuant to Section 5205.5. A violation of this subdivision is a misdemeanor.

(d) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 4. Section 40000.13 of the Vehicle Code is amended to read:

40000.13. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 16560, relating to interstate highway carriers.

(b) Sections 20002 and 20003, relating to duties at accidents.

(c) Section 21200.5, relating to riding a bicycle while under the influence of an alcoholic beverage or any drug.

(d) Section 21651, subdivision (b), relating to wrong-way driving on divided highways.

(e) Section 21655.9, subdivision (c), relating to illegal use of decals, labels, or other identifiers.

(f) Section 22520.5, a second or subsequent conviction of an offense relating to vending on or near freeways.

(g) Section 22520.6, a second or subsequent conviction of an offense relating to roadside rest areas and vista points.

(h) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 5. Section 40000.13 is added to the Vehicle Code, to read:

40000.13. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 16560, relating to interstate highway carriers.

(b) Sections 20002 and 20003, relating to duties at accidents.

(c) Section 21200.5, relating to riding a bicycle while under the influence of an alcoholic beverage or any drug.

(d) Section 21651, subdivision (b), relating to wrong-way driving on divided highways.

(e) Section 22520.5, a second or subsequent conviction of an offense relating to vending on or near freeways.

(f) Section 22520.6, a second or subsequent conviction of an offense relating to roadside rest areas and vista points.

(g) This section shall become operative on January 1, 2008.

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.

CHAPTER 331

An act to amend Section 830.7 of the Penal Code, relating to arrest.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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.

(h) Persons regularly employed as investigators by the Department of Transportation for the City of Los Angeles and designated by local ordinance as public officers, to the extent necessary to enforce laws related to public transportation, and authorized by a memorandum of understanding with the chief of police, permitting the exercise of that authority. For the purposes of this subdivision, "investigator" means an employee defined in

Section 53075.61 of the Government Code authorized by local ordinance to enforce laws related to public transportation. Transportation investigators authorized by this section shall not be deemed "peace officers" for purposes of Sections 241 and 243.

CHAPTER 332

An act to amend Section 48918 of the Education Code, relating to pupil expulsion.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board.

Within 10 schooldays after the conclusion of the hearing, the governing board shall decide whether to expel the pupil, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall decide whether to expel the pupil within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable during the regular school year, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. If compliance by the governing board

with the time requirements for the conducting of an expulsion hearing under this subdivision is impractical due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48925, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days prior to the first day of school for the school year. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include all of the following:

(1) The date and place of the hearing.

(2) A statement of the specific facts and charges upon which the proposed expulsion is based.

(3) A copy of the disciplinary rules of the district that relate to the alleged violation.

(4) A notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1.

(5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or to be represented by legal counsel or by a nonattorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses. In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall be given five days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during their testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential. Nothing in this subdivision shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing. Nothing in this section is intended to require a pupil or the pupil's parent or

guardian to be represented by legal counsel or by a nonattorney adviser at the hearing.

(A) For purposes of this section, "legal counsel" means an attorney or lawyer who is admitted to the practice of law in California, and is an active member of the State Bar of California.

(B) For purposes of this section, "nonattorney advisor" means an individual who is not an attorney or lawyer, but who is familiar with the facts of the case, and has been selected by the pupil or pupil's parent or guardian to provide assistance at the hearing.

(c) Notwithstanding Section 54593 of the Government Code and Section 35145, the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days before the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.

If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television.

(d) Instead of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207, for a hearing officer to conduct the hearing. The governing board may also appoint an impartial administrative panel of three or more certificated persons, none of whom is a member of the board or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer

or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

(f) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.

The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

In hearings which include an allegation of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in

subdivision (n) of Section 48900, evidence of specific instances, of a complaining witness' prior sexual conduct is to be presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.

(i) (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11525 of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(j) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by all of the following:

(1) Notice of the right to appeal the expulsion to the county board of education.

(2) Notice of the education alternative placement to be provided to the pupil during the time of expulsion.

(3) Notice of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the pupil's expulsion.

(k) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record.

The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

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.

CHAPTER 333

An act to amend Section 1700 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 1700 of the Welfare and Institutions Code is amended to read:

1700. The purpose of this chapter is to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed

toward the correction and rehabilitation of young persons who have committed public offenses.

CHAPTER 334

An act to amend Sections 441 and 463 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 441 of the Revenue and Taxation Code is amended to read:

441. (a) Each person owning taxable personal property, other than a mobilehome subject to Part 13 (commencing with Section 5800), having an aggregate cost of one hundred thousand dollars ($100,000) or more for any assessment year shall file a signed property statement with the assessor. Every person owning personal property that does not require the filing of a property statement or real property shall, upon request of the assessor, file a signed property statement. Failure of the assessor to request or secure the property statement does not render any assessment invalid.

(b) The property statement shall be declared to be true under the penalty of perjury and filed annually with the assessor between the lien date and 5 p.m. on April 1. The penalty provided by Section 463 applies for property statements not filed by May 7. If May 7 falls on a Saturday, Sunday, or legal holiday, a property statement that is mailed and postmarked on the next business day shall be deemed to have been filed between the lien date and 5 p.m. on May 7. If, on the dates specified in this subdivision, the county's offices are closed for the entire day, that day is considered a legal holiday for purposes of this section.

(c) The property statement may be filed with the assessor through the United States mail, properly addressed with postage prepaid. For purposes of determining the date upon which the property statement is deemed filed with the assessor, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope containing the application, shall control. This subdivision shall be applicable to every taxing agency, including, but not limited to, a chartered city and county, or chartered city.

(d) At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In

this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties.

(e) In the case of a corporate owner of property, the property statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign the statements on behalf of the corporation.

(f) In the case of property owned by a bank or other financial institution and leased to an entity other than a bank or other financial institution, the property statement shall be submitted by the owner bank or other financial institution.

(g) The assessor may refuse to accept any property statement he or she determines to be in error.

(h) If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of the continuance.

(i) Notwithstanding any other provision of law, every person required to file a property statement pursuant to this section shall be permitted to amend that property statement until May 31 of the year in which the property statement is due, for errors and omissions not the result of willful intent to erroneously report. The penalty authorized by Section 463 shall not apply to an amended statement received prior to May 31, provided the original statement is not subject to penalty pursuant to subdivision (b). The amended property statement shall otherwise conform to the requirements of a property statement as provided in this article.

(j) This subdivision shall apply to the oil, gas, and mineral extraction industry only. Any information that is necessary to file a true, correct, and complete statement shall be made available by the assessor, upon request, to the taxpayer by mail or at the office of the assessor by February 28. For each business day beyond February 28 that the information is unavailable, the filing deadline in subdivision (b) shall be extended in that county by one business day, for those statements affected by the delay. In no case shall the filing deadline be extended beyond June 1 or the first business day thereafter.

SEC. 2. Section 463 of the Revenue and Taxation Code is amended to read:

463. If any person who is required by law or is requested by the assessor to make an annual property statement fails to file an annual property statement within the time limit specified by Section 441 or make and subscribe the affidavit respecting his or her name and place of residence, a penalty of 10 percent of the assessed value of the

unreported taxable tangible property of that person placed on the current roll shall be added to the assessment made on the current roll.

Notice of any penalty added to the secured roll pursuant to this section shall be mailed by the assessor to the assessee at his or her address as contained in the official records of the county assessor.

If the assessee establishes to the satisfaction of the county board of equalization or the assessment appeals board that the failure to file the property statement within the time required by Section 441 was due to reasonable cause and not due to willful neglect, it may order the penalty abated, provided the assessee has filed with the county board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

CHAPTER 335

An act to add Section 72114.2 to, to repeal Sections 26666 and 72114 of, and to repeal Article 25.5 (commencing with Section 74361) of Chapter 10 of Title 8 of, the Government Code, relating to court services.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 26666 of the Government Code is repealed.

SEC. 2. Section 72114 of the Government Code is repealed.

SEC. 3. Section 72114.2 is added to the Government Code, to read:

72114.2. (a) Notwithstanding any other provision of law, on or after January 1, 2000, the San Diego County Marshal's Office shall be abolished, and there shall be a bureau in the San Diego County Sheriff's Department under which court security services and the service of civil and criminal process are consolidated.

This bureau's primary function shall be to provide the management with direction, supervision, and personnel for court-related services which include court security, the service of civil and criminal process, public safety protection, judicial

protection, standards of performance, and other matters incidental to the performance of those services.

The sheriff shall be appointing authority for all bureau personnel. The person selected by the sheriff to oversee the operation of court-related services, as described in this section, shall report directly to the sheriff.

Notwithstanding Section 77212, the operational service level for court security services shall be in accordance with agreements between the court and the County of San Diego, which shall not provide a lesser operational service level than may be required by statute.

The operational service level for the service of civil and criminal process and for administrative services shall be in accordance with agreements between the court and the County of San Diego, which shall not provide a lesser operational service level than may be required by statute.

To ensure that the costs assessed to the court for bureau services are in full conformance with the rules of court and statutes concerning trial court funding, the bureau shall be maintained as a separate organizational unit for budgeting and cost accounting purposes.

On a semiannual basis or more often as required by law, the sheriff shall provide the court with an accounting of costs for the bureau, in sufficient detail to allow for an assessment of budget performance, separately, for each function of the bureau. The county auditor and controller shall provide to the court copies of each audit report conducted on the bureau. The court is authorized to conduct, and the sheriff shall cooperate in, independent financial audits of the bureau, either by court staff or by independent auditors.

(b) Notwithstanding any other provision of law, concomitant with the abolition of the marshal's office all personnel of the marshal's office shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits.

The marshal and the assistant marshal or their equivalents, may become employees of the sheriff's department.

(c) Permanent employees of the marshal's office on the effective date of transfer of services from the marshal to the sheriff pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Promotions for all personnel from the marshal's office shall be made pursuant to standards set by the sheriff. Probationary employees in the marshal's office on the effective date of the abolition shall not be required to serve a new probationary period. All probationary time served as an employee of the marshal shall be credited toward probationary time required as an employee of the sheriff's department.

(d) All county service and all service with the marshal's office by employees of the marshal's office on the effective date of the abolition

of the marshal's office shall be counted toward seniority in the sheriff's department. All time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) As a result of the abolition of the marshal's office, no employee of the marshal's office who becomes an employee of the sheriff's department pursuant to this section shall lose peace officer status or be reduced in rank or salary.

(f) Prior to the abolition of the marshal's office, the court and the County of San Diego shall enter into a contractual agreement regarding the provision of court security services to be provided by the sheriff. Thereafter, from time to time, the court and the County of San Diego may enter into agreements regarding the provision of court security services to be provided by the sheriff.

(g) After abolition of the marshal's office, a two-member committee comprised of a representative of the presiding judge of the superior court and a representative of the sheriff shall make recommendations to the sheriff regarding courtroom assignments of bailiffs. Bailiff assignments and the release from those assignments shall be made only after consultation with, and concurrence of, the affected judge or judicial officer. The presiding judge may provide the concurrence required by this section. This subdivision shall not apply to actions instituted by the sheriff for fitness for duty reasons or discipline that is subject to review by the San Diego County Civil Service Commission.

(h) For a period of five years following the abolition of the marshal's office, personnel of the marshal's office who become employees of the sheriff's department shall not be transferred from the bureau in the sheriff's department under which court-related services and the service of civil and criminal process are consolidated, unless the transfer is voluntary or is the result of fitness for duty reasons or discipline that is subject to review by the San Diego County Civil Service Commission.

(i) Personnel of the marshal's office who become employees of the sheriff's department shall be entitled to request an assignment to another bureau or division within the sheriff's department, and that request shall be reviewed the same as any other request from within the department.

(j) This section shall become operative in the County of San Diego when the board of supervisors adopts a resolution declaring this section operative. The implementation of this section shall be subject to approval and adoption by the board of supervisors of necessary actions, appropriations, and ordinances consistent with the Charter of the County of San Diego and other statutory authority.

SEC. 4. Article 25.5 (commencing with Section 74361) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 5. Due to unique facts and circumstances applicable to San Diego County, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16

of Article IV of the California Constitution. Special legislation is, therefore, necessarily applicable to only San Diego County.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 336

An act to amend Sections 22443.1 and 22445 of, and to add Section 22442.4 to, the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 22442.4 is added to the Business and Professions Code, to read:

22442.4. An immigration consultant shall notify the Secretary of State's office within 30 days of any change of name, address, telephone number, or agent for service of process.

SEC. 2. 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 fifty thousand dollars ($50,000) 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 fifty thousand dollars ($50,000). 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.

SEC. 3. Section 22445 of the Business and Professions Code is amended to read:

22445. (a) A person who violates this chapter shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation.

(b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000) or more than ten thousand dollars ($10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

(c) A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison.

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.

CHAPTER 337

An act relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The increasing complexity of the tasks of the California work force and the need for increased intellectual competencies in workers creates a context where postbaccalaureate learning and economic prosperity are inextricably connected.

(b) Applied doctorate programs bridge the duality between abstract, theoretical, and intellectual work and the practical requirements of everyday work and employment. These programs construct important connections among communities, employers, and academia.

(c) Where the demand for doctoral education is significant and opportunities for collaboration within California are limited, it may be possible for California public colleges and universities to develop more applied joint doctoral programs to meet the increasing needs of the state's work force.

(d) These potential collaborations between in-state and out-of-state institutions may capitalize on complementary resources, unusual specializations, and existing scholarly ties.

(e) The opportunity to leverage expertise may present an excellent opportunity to enhance the education and professional qualifications of California's students and, ultimately, its work force.

SEC. 2. (a) The California Postsecondary Education Commission shall conduct a study to determine the current capacity for applied joint doctorates in the state. The study shall specifically focus on whether the state is meeting its needs for applied joint doctorates with its current applied joint doctoral programs.

(b) While developing the study pursuant to this section, the commission shall consult with all segments of higher education, including approved degree-granting institutions, representatives from business, industry, and professional communities, officials from state and local governments, and representatives from local educational agencies, with the intent to qualify and quantify the

value and merit of applied joint doctoral programs to present and future work force needs.

(c) Notwithstanding Section 7550.5 of the Government Code, on or before June 30, 2000, the commission shall complete the study conducted pursuant to this section and transmit copies of the study to the Governor and to the appropriate education policy and fiscal committees of the Legislature.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the important study required by Section 2 of this act to be conducted in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 338

An act to add Section 3307.5 to the Government Code, relating to public safety officers.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 3307.5 is added to the Government Code, to read:

3307.5. (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars ($500) per day

commencing two working days after the date of receipt of the notification to cease and desist.

CHAPTER 339

An act to repeal and add Section 11517 of the Government Code, relating to administrative adjudication.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 11517 of the Government Code is repealed.

SEC. 2. Section 11517 is added to the Government Code, to read:

11517. (a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member of the agency who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c) (1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

CHAPTER 340

An act to amend Section 230 of the Labor Code, relating to employment.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 230 of the Labor Code is amended to read:

230. (a) No employer shall discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is required to serve.

(b) No employer shall discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(c) No employer shall discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence as defined in Section 6211 of the Family Code for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of a domestic violence victim or his or her child.

(d) As a condition of taking time off for a purpose set forth in subdivision (c), the employee shall give the employer reasonable notice that he or she is required to appear in court unless an unscheduled or emergency court appearance is required for the health, safety, or welfare of the domestic violence victim or his or her child. When an unscheduled or emergency court appearance is required, the employer shall not take any action against the employee if the employee, within a reasonable time after the appearance, provides evidence from the court or prosecuting attorney that he or she has appeared in court.

(e) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a), (b), or (c) shall be entitled to

reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(f) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a), (b), or (c) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (c) shall have one year from the date of occurrence of the violation to file his or her complaint.

(g) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a), (b), or (c). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

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.

CHAPTER 341

An act to add Section 7513.5 to the Government Code, relating to state retirement systems.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. (a) The Legislature of the State of California is concerned about allegations of religious and ethnic discrimination

against minority workers in many firms conducting business in Northern Ireland.

(b) The Legislature further finds that the State Teachers' Retirement System and the Public Employees' Retirement System have investments in domestic and international firms presently conducting business in Northern Ireland.

(c) The Teachers' Retirement Board and the Board of Administration of the Public Employees' Retirement System are encouraged to make future retirement system investments in United States and international firms conducting business in Northern Ireland pursuant to the fiduciary standards prescribed by Section 17 of Article XVI of the California Constitution and related statutes and the MacBride Principles of fair employment.

SEC. 2. Section 7513.5 is added to the Government Code, to read:

7513.5. (a) On or before the first day of March of each year, the Teachers' Retirement Board and the Board of Administration of the Public Employees' Retirement System, respectively, shall investigate and report to the Legislature on the extent to which United States and international corporations operating in Northern Ireland, in which the assets of the State Teachers' Retirement System and the Public Employees' Retirement System are invested, adhere, in compliance with the law applicable in Northern Ireland, to the principles of nondiscrimination in employment and freedom of workplace opportunity.

(b) The Teachers' Retirement Board and the Board of Administration of the Public Employees' Retirement System, respectively, shall compile a list of domestic and international corporations that, directly or through a subsidiary, do business in Northern Ireland, and in whose stocks or obligations it has invested, and determine whether each corporation on the list has, during the preceding year, taken substantial action, in compliance with the law applicable in Northern Ireland, designed to lead toward the achievement of the following goals:

(1) Increased representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical, and technical jobs.

(2) Adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

(3) Banning of provocative religious or political emblems from the workplace.

(4) Public advertisement of all job openings and the use of special recruitment efforts to attract applicants from underrepresented religious groups.

(5) Establishment of layoff, recall, and termination procedures which do not, in practice, favor particular religious groupings.

(6) Abolition of job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

(7) The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.

(8) The establishment of procedures to assess, identify, and actively recruit minority employees with potential for further advancement.

(9) The appointment of senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

(c) Whenever feasible and consistent with their fiduciary responsibility, the Teachers' Retirement Board and the Board of Administration of the Public Employees' Retirement System, respectively, shall support shareholder resolutions designed to encourage domestic and international corporations in which the Teachers' Retirement Board and the Board of Administration of the Public Employees' Retirement System, respectively, has invested to pursue, in compliance with the law applicable in Northern Ireland, a policy of affirmative action in Northern Ireland in accordance with the goals listed in subdivision (b).

CHAPTER 342

An act to amend Sections 6068, 6070, 6085, and 6141.1 of, to add Sections 6008.6, 6031.5, and 6140.05 to, to add and repeal Section 6140 of, and to repeal and add Section 6145 of, the Business and Professions Code, relating to the State Bar.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 6008.6 is added to the Business and Professions Code, to read:

6008.6. The State Bar shall award no contract for goods, services, or both, for an aggregate amount in excess of fifty thousand dollars ($50,000), except pursuant to the standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. The State Bar shall establish a request for proposal procedure by rule, pursuant to the general standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 1.5. Section 6031.5 is added to the Business and Professions Code, to read:

6031.5. (a) The Conference of Delegates, as established under and pursuant to Article 6 of the Rules and Regulations of the State Bar, shall not be funded after January 1, 2000, with mandatory fees collected pursuant to subdivision (a) of Section 6140.

The State Bar may provide the Conference of Delegates with administrative and support services, provided the State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (c), funds raised by or through the activities of the Conference of Delegates, or other funds collected from voluntary sources. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the Conference of Delegates.

(b) State Bar sections, as established under and pursuant to Article 13 of the Rules and Regulations of the State Bar, and their activities shall not be funded after January 1, 2000, with mandatory fees collected pursuant to subdivision (a) of Section 6140.

The State Bar may provide an individual section, or two or more sections collectively, with administrative and support services, provided the State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (c), funds raised by or through the activities of the sections, or other funds collected from voluntary sources. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the sections.

(c) Notwithstanding the other provisions of this section, the State Bar is expressly authorized to collect voluntary fees to fund the Conference of Delegates or the State Bar sections on behalf of those organizations in conjunction with the State Bar's collection of its annual membership dues. Funds collected pursuant to this subdivision, and other funds raised by or through the activities of the Conference of Delegates or sections, or collected from voluntary sources, for their support or operation, shall not be subject to the expenditure limitations of subdivision (b) of Section 6140.05.

SEC. 2. Section 6068 of the Business and Professions Code is amended to read:

6068. It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never

to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires the attorney to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

(j) To comply with the requirements of Section 6002.1.

(k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(*l*) To keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of any judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of any felony, or any misdemeanor committed in the course of the practice of law, or in any manner such that a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or any misdemeanor of that type.

(6) The imposition of discipline against the attorney by any professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

SEC. 3. Section 6070 of the Business and Professions Code is amended to read:

6070. (a) The State Bar shall request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer a mandatory continuing legal education program. The rule that the State Bar requests the Supreme Court to adopt shall require that, within designated 36-month periods, all active members of the State Bar shall complete at least 25 hours of legal education activities approved by the State Bar or offered by a State Bar approved provider, with four of those hours in legal ethics. A member of the State Bar who fails to satisfy the mandatory continuing legal education requirements of the program authorized by the Supreme Court rule shall be enrolled as an inactive member pursuant to rules adopted by the Board of Governors of the State Bar.

(b) For purposes of this section, statewide associations of public agencies and incorporated, nonprofit professional associations of

attorneys, shall be certified as State Bar approved providers upon completion of an appropriate application process to be established by the State Bar. The certification may be revoked only by majority vote of the board, after notice and hearing, and for good cause shown. Programs provided by the California District Attorneys Association or the California Public Defenders Association, or both, including, but not limited to, programs provided pursuant to Title 1.5 (commencing with Section 11500) of Part 4 of the Penal Code, are deemed to be legal education activities approved by the State Bar or offered by a State Bar approved provider.

(c) Notwithstanding the provisions of subdivision (a), officers and elected officials of the State of California, and full-time professors at law schools accredited by the State Bar of California, the American Bar Association, or both, shall be exempt from the provisions of this section. Full-time employees of the State of California, acting within the scope of their employment, shall be exempt from the provisions of this section. Nothing in this section shall prohibit the State of California, or any political subdivision thereof, from establishing or maintaining its own continuing education requirements for its employees.

(d) The State Bar shall provide and encourage the development of low-cost programs and materials by which members may satisfy their continuing education requirements. Special emphasis shall be placed upon the use of internet capabilities and computer technology in the development and provision of no-cost and low-cost programs and materials. Towards this purpose, the State Bar shall ensure that by July 1, 2000, any member possessing or having access to the internet or specified generally available computer technology shall be capable of satisfying the full self-study portion of his or her MCLE requirement at a cost of fifteen dollars ($15) per hour or less.

SEC. 4. Section 6085 of the Business and Professions Code is amended to read:

6085. Any person complained against shall be given fair, adequate, and reasonable notice and have a fair, adequate, and reasonable opportunity and right:

(a) To defend against the charge by the introduction of evidence.

(b) To receive any and all exculpatory evidence from the State Bar after the initiation of a disciplinary proceeding in State Bar Court, and thereafter when this evidence is discovered and available. This subdivision shall not require the disclosure of mitigating evidence.

(c) To be represented by counsel.

(d) To examine and cross-examine witnesses.

(e) To exercise any right guaranteed by the California Constitution or the United States Constitution, including the right against self-incrimination.

He or she shall also have the right to the issuance of subpoenas for attendance of witnesses to appear and testify or produce books and papers, as provided in this chapter.

SEC. 5. Section 6140 is added to the Business and Professions Code, to read:

6140. (a) The board shall fix the annual membership fee for active members at a sum not exceeding three hundred eighteen dollars ($318).

(b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) 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. 6. Section 6140.05 is added to the Business and Professions Code, to read:

6140.05. (a) The invoice provided to members for payment of the annual membership fee shall provide each member the option of deducting five dollars ($5) from the annual fee if the member elects not to support lobbying and related activities by the State Bar outside of the parameters established by the United States Supreme Court in Keller v. State Bar of California (1990) 496 U.S. 1.

(b) For the support or defense of lobbying and related activities conducted by the State Bar on or after January 1, 2000, outside of the parameters of Keller v. State Bar of California, and in support or defense of any litigation arising therefrom, the Board of Governors of the State Bar shall not expend a sum exceeding the following: the product of the number of members paying their annual dues who did not elect the optional deduction multiplied by five dollars ($5).

Moneys collected pursuant to this section shall not be deemed voluntary fees or funds for the purpose of subdivision (c) of Section 6031.5.

(c) As used in this section, "lobbying and related activities by the State Bar" includes the consideration of measures by the Board of Governors of the State Bar that are deemed outside the parameters established in Keller v. State Bar, the purview determination, lobbying and the preparation for lobbying of the measures, and any litigation in support or defense of that lobbying. The determination of these costs shall include, but not be limited to, overhead and administrative costs.

SEC. 7. Section 6141.1 of the Business and Professions Code is amended to read:

6141.1. (a) The payment by any member of the annual membership fee, any portion thereof, or any penalty thereon, may be waived by the board as it may provide by rule. The board may require submission of recent federal and state income tax returns and other proof of financial condition as to those members seeking waiver

of all or a portion of their fee or penalties on the ground of financial hardship.

(b) The board shall adopt rules providing that:

(1) An active member who can demonstrate annual income from the practice of law of less than forty thousand dollars ($40,000) shall presumptively qualify for a waiver of 25 percent of the annual membership fee.

(2) An active member who can demonstrate annual income from the practice of law of less than twenty-five thousand dollars ($25,000) shall presumptively qualify for a waiver of 50 percent of the annual membership fee.

SEC. 8. Section 6145 of the Business and Professions Code is repealed.

SEC. 9. Section 6145 is added to the Business and Professions Code, to read:

6145. (a) The board shall contract with a nationally recognized independent public accounting firm for an audit of its financial statement for each fiscal year beginning after December 31, 1998. The financial statement shall be promptly certified under oath by the treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit shall examine the receipts and expenditures of the State Bar, the Conference of Delegates, and the State Bar sections, to assure that the receipts of the Conference of Delegates and the sections are being applied, and their expenditures are being made, in compliance with subdivisions (a) and (b) of Section 6031.5, and that the receipts of the Conference of Delegates and the receipts of the sections are applied only to the work of the Conference of Delegates and the sections, respectively.

(b) The board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001 to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, through December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the Bureau of State Audits may contract with a third party to conduct the performance audit. This

subdivision is not intended to reduce the number of audits the Bureau of State Audits may otherwise be able to conduct.

SEC. 10. The Legislature finds and declares that it is in the public interest to continue the mandatory continuing legal education requirements for attorneys licensed to practice law. The Legislature further finds and declares that officers and elected officials of the State of California, and their full-time employees, undergo ongoing continuing legal education in their review of the implementation of current statutes and regulations, including any court interpretation of a statute or regulation, and in their consideration and analysis of proposed changes in those statutes and regulations, thereby warranting their exemption from the requirements of Section 6070 of the Business and Professions Code. The Legislature also finds and declares that full-time law professors at accredited law schools also undergo ongoing continuing legal education in their review of the statutes and regulations of this state, including any court interpretation of a statute or regulation, thereby warranting their exemption from the requirements of Section 6070 of the Business and Professions Code.

SEC. 11. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. This act shall become operative only if Senate Bill 143 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2000.

CHAPTER 343

An act to add Chapter 30 (commencing with Section 22940) to Division 8 of the Business and Professions Code, relating to billing practices.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Chapter 30 (commencing with Section 22940) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 30. BILLING PRACTICES

22940. It shall be unlawful for any business to use words expressly referencing an individual's marital status as part of the individual's mailing address on a billing statement, related correspondence,

enclosing envelope, or any solicitation for new business. This shall not prohibit the use of the prefix "Mr.," "Mrs.," "Ms.," or "Miss."

22941. Any violation of this chapter shall be punishable by a civil penalty of up to two hundred fifty dollars ($250) for each violation.

CHAPTER 344

An act to amend Section 6301.1 of the Business and Professions Code, to amend Sections 77, 116.950, 400, 422.30. 871.3. 1014, 1068, 1085, 1103, and 1167.3 of, to amend the heading of Title 4 (commencing with Section 392) of Part 2 of, to amend the heading of Chapter 1 (commencing with Section 392) of Title 4 of Part 2 of, and to amend and renumber the heading of Chapter 2 (commencing with Section 404) of Title 4 of Part 2 of, to add Sections 87 and 88 to, to add Chapter 2 (commencing with Section 403.010) to Title 4 of Part 2 of, and to repeal Sections 395.9 and 399.5 of, the Code of Civil Procedure, to amend Sections 26863, 69508, 69508.5, and 71042.6 of the Government Code, to amend Sections 1214, 1238, and 1382, of the Penal Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to trial court unification, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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) Four judges of the superior court, to be elected by and from the superior court judges of the county. Each superior court judge so elected shall serve a three-year term. In order to maintain overlapping terms, those judges holding office as of the date of unification of the municipal and superior courts of San Diego County shall remain in office until the expiration of their original terms.

(b) 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.

(c) 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 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 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.

(i) A reference in any other statute to the appellate department of the superior court means the appellate division of the superior court.

SEC. 3. Section 87 is added to the Code of Civil Procedure, to read:

87. (a) A limited civil case may be brought in the small claims division if the case is within the jurisdiction of the small claims division as otherwise provided by statute. Where a statute or rule applicable to a small claims case conflicts with a statute or rule applicable to a limited civil case, the statute or rule applicable to a small claims case governs the small claims case and the statute or rule applicable to a limited civil case does not.

(b) Nothing in this section affects the jurisdiction of the small claims division as otherwise provided by statute.

SEC. 4. Section 88 is added to the Code of Civil Procedure, to read:

88. A civil action or proceeding other than a limited civil case may be referred to as an unlimited civil case.

SEC. 5. 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 judicial officers who have extensive experience presiding in small claims court, appointed by the Judicial Council. Judicial officers appointed under this subdivision may include judicial officers of the superior court, judicial officers of the municipal court, judges of the appellate courts, retired judicial officers, and temporary judges.

(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. 6. The heading of Title 4 (commencing with Section 392) of Part 2 of the Code of Civil Procedure is amended to read:

TITLE 4. OF THE PLACE OF TRIAL, RECLASSIFICATION, AND COORDINATION OF CIVIL ACTIONS

SEC. 7. The heading of Chapter 1 (commencing with Section 392) of Title 4 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER 1. PLACE OF TRIAL

SEC. 8. Section 395.9 of the Code of Civil Procedure is repealed.

SEC. 9. Section 399.5 of the Code of Civil Procedure is repealed.

SEC. 10. 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, 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. 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. 11. Chapter 2 (commencing with Section 403.010) is added to Title 4 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2. RECLASSIFICATION OF CIVIL ACTIONS AND PROCEEDINGS

403.010. (a) This chapter applies in a county in which there is no municipal court.

(b) Nothing in this chapter expands or limits the law on whether a plaintiff, cross-complainant, or petitioner may file an amended complaint or other amended initial pleading. Nothing in this chapter expands or limits the law on whether, and to what extent, an amendment relates back to the date of filing the original complaint or other initial pleading.

403.020. (a) If a plaintiff, cross-complainant, or petitioner files an amended complaint or other amended initial pleading that changes the jurisdictional classification from that previously stated in the caption, and simultaniously pays the reclassification fees provided in Section 403.050, the clerk shall promptly reclassify the case.

(b) For purposes of this section, an amendment to an initial pleading shall be treated in the same manner as an amended initial pleading.

403.030. If a cross-complainant in a limited civil case files a cross-complaint that causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case, or otherwise fail to satisfy the requirements for a limited civil case as prescribed by Section 85, the caption of the cross-complaint shall state that the action or proceeding is a limited civil case to be reclassified by cross-complaint, or words to that effect. The cross-complainant shall pay the reclassification fees provided in Section 403.050, and the clerk shall promptly reclassify the case.

403.040. (a) If the caption of a complaint, cross-complaint, petition, or other initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case, the defendant or cross-defendant may file a motion for

reclassification within the time allowed for that party to respond to the initial pleading. The court, on its own motion, may reclassify a case at any time. A motion for reclassification does not extend the moving party's time to answer or otherwise respond. The court shall grant the motion and enter an order for reclassification, regardless of any fault or lack of fault, if the caption of the initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case.

(b) If a defendant or cross-defendant files a motion for reclassification after the time for that party to respond to the complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied:

(1) The caption of the initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case.

(2) The moving party shows good cause for not seeking reclassification earlier.

(c) Nothing in the section shall be construed to require the superior court to reclassify an 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.

(d) In any case where the misclassification 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.

403.050. Unless the court otherwise directs:

(a) If a court grants a motion for reclassification, the reclassification fees shall be determined as follows:

(1) If a party misclassifies a case as a limited civil case and the case is reclassified, the party shall pay as a reclassification fee the difference between the fee paid for filing the first paper in a limited civil case and the fee for filing the first paper in a case other than a limited civil case. A similar adjustment shall be made for other fees paid before reclassification. Each party shall pay for reclassification of that party's pleadings, but the Judicial Council may prescribe rules governing the manner of making payment and consequences of failure to make payment.

(2) If a party fails to classify a case as a limited civil case and the case is reclassified, the party shall not be required to pay a new fee for filing the first paper in a limited civil case, but the party is not entitled to a refund of the difference between the fee for filing the first paper in a case other than a limited civil case and the fee for filing the first paper in a limited civil case. Other fees paid before reclassification shall be handled in the same manner.

(b) If an action or proceeding is reclassified by filing an amended pleading or an amendment to a pleading pursuant to Section 403.020

or a cross-complaint pursuant to Section 403.030, the reclassification fees shall be determined as if the court had granted a motion for reclassification.

403.060. (a) If an order is made for reclassification of an action or proceeding pursuant to Section 403.040, and fees have been paid as provided in Section 403.050, the clerk shall promptly reclassify the case.

(b) If the fees have not been paid as provided in Section 403.050 within five days after service of notice of the order for reclassification, any party interested in the case, regardless of whether that party is named in the complaint, may pay the fees, and the clerk shall promptly reclassify the case as if the fees had been paid as provided in Section 403.050.

(c) The cause of action shall not be further prosecuted in any court until the reclassification fees are paid. If those fees are not paid within 30 days after service of notice of an order for reclassification, the court on its own motion or motion of 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 reclassification fees are paid.

403.070. (a) An action or proceeding that is reclassified shall be deemed to have been commenced at the time the complaint or petition was initially filed, not at the time of reclassification.

(b) The court shall have and exercise over the reclassified 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.

403.080. When an order is made by the superior court granting or denying a motion to reclassify an action or proceeding pursuant to Section 403.040, 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 proper classification of the action or proceeding pursuant to Section 403.040. 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 superior 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 superior court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

403.090. The Judicial Council may prescribe rules, not inconsistent with statute, governing the procedure for reclassification of civil actions and proceedings.

SEC. 12. The heading of Chapter 2 (commencing with Section 404) of Title 4 of Part 2 of the Code of Civil Procedure is amended and renumbered to read:

CHAPTER 3. COORDINATION

SEC. 13. 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, and the clerk shall classify the case accordingly.

SEC. 14. 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 Section 396 and Chapter 2 (commencing with Section 403.010) of Title 4, 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 the good faith improver 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. 15. 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 403.040, 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. 16. 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 or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

SEC. 17. 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 or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

SEC. 18. 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 or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

SEC. 19. Section 1167.3 of the Code of Civil Procedure is amended to read:

1167.3. In any action under this chapter, unless otherwise ordered by the court for good cause shown, the time allowed the defendant to answer the complaint, answer the complaint, if amended, or amend the answer under paragraph (2), (3), (5), (6), or (7) of subdivision (a) of Section 586 shall not exceed five days.

SEC. 20. 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 trial court recordkeeping system and conversion of the trial 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 trial court recordkeeping system or converting the trial 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. 21. Section 69508 of the Government Code is amended to read:

69508. (a) The judges of each superior court having three or more judges, shall choose from their own number a presiding judge who serves as such at their pleasure. Subject to the rules of the Judicial Council, the presiding judge shall distribute the business of the court among the judges, and prescribe the order of business.

(b) Notwithstanding subdivision (a), the Judicial Council may provide by rule of court for the qualifications of the presiding judge.

SEC. 22. Section 69508.5 of the Government Code is amended to read:

69508.5. (a) In courts with two judges a presiding judge shall be selected by the judges each calendar year and the selection should be on the basis of administrative qualifications and interest.

(b) If a selection cannot be agreed upon, then the office of presiding judge shall be rotated each calendar year between the two judges, commencing with the senior judge. If the judges are of equal seniority, the first presiding judge shall be selected by lot.

(c) Notwithstanding subdivisions (a) and (b), the Judicial Council may provide by rule of court for the qualifications of the presiding judge.

SEC. 23. Section 71042.6 of the Government Code is amended to read:

71042.6. For the purpose of establishing boundaries under Section 71042.5, upon consolidation of judicial districts or unification of municipal and superior courts in a county, a map approved by the county surveyor shall be filed with the county recorder showing the boundaries of all consolidated or unified districts and component districts as of the date of consolidation or unification.

Such map and boundaries shall be applicable to any consolidation or unification which becomes effective on or after the effective date of this section.

Such map shall be conclusively presumed to be accurate and may be used in evidence in any proceeding involving application of Section 71042.5.

SEC. 24. Section 1214 of the Penal Code, as added by Section 8 of Chapter 587 of the Statutes of 1998, is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04 as operative on

or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, or affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. The court also shall provide this information to the district attorney upon request in connection with an investigation or prosecution involving perjury or the veracity of the information contained within the defendant's financial disclosure. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, or affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Except as provided in subdivision (d), and notwithstanding the amount in controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or restitution fine that was imposed pursuant to Section 1202.4 by a municipal court, or by the superior court acting pursuant to subdivision (d) of Section 1462, may be enforced in the same manner as a money judgment in a limited civil case.

(d) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section

1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

(e) (1) This section shall become operative on January 1, 2000, and shall be applicable to all courts, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f) of Section 1202.4.

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1202.4 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 25. Section 1238 of the Penal Code is amended to read:

1238. (a) An appeal may be taken by the people from any of the following:

(1) An order setting aside all or any portion of the indictment, information, or complaint.

(2) An order sustaining a demurrer to all or any portion of the indictment, accusation, or information.

(3) An order granting a new trial.

(4) An order arresting judgment.

(5) An order made after judgment, affecting the substantial rights of the people.

(6) An order modifying the verdict or finding by reducing the degree of the offense or the punishment imposed or modifying the offense to a lesser offense.

(7) An order dismissing a case prior to trial made upon motion of the court pursuant to Section 1385 whenever such order is based upon an order granting the defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code.

(8) An order or judgment dismissing or otherwise terminating all or any portion of the action including such an order or judgment after a verdict or finding of guilty or an order or judgment entered before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(9) An order denying the motion of the people to reinstate the complaint or a portion thereof pursuant to Section 871.5.

(10) The imposition of an unlawful sentence, whether or not the court suspends the execution of the sentence, except that portion of a sentence imposing a prison term which is based upon a court's

choice that a term of imprisonment (A) be the upper, middle, or lower term, unless the term selected is not set forth in an applicable statute, or (B) be consecutive or concurrent to another term of imprisonment, unless an applicable statute requires that the term be consecutive. As used in this paragraph, "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 which strikes or otherwise modifies the effect of an enhancement or prior conviction.

(11) An order recusing the district attorney pursuant to Section 1424.

(b) If, pursuant to paragraph (8) of subdivision (a), the people prosecute an appeal to decision, or any review of such decision, it shall be binding upon them and they shall be prohibited from refiling the case which was appealed.

(c) When an appeal is taken pursuant to paragraph (7) of subdivision (a), the court may review the order granting the defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code.

(d) Nothing contained 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 which 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.

SEC. 26. 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 on an indictment or 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. 27. 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 or 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. 28. 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 technical and corresponding changes in the statutes be made immediately so that an orderly transition of the court system will occur.

CHAPTER 345

An act to amend Sections 18210, 18321, and 18437 of, and to add Section 18003.7 to, the Financial Code, relating to industrial loan companies.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 18003.7 is added to the Financial Code, to read:

18003.7. "Demand deposit" means investment or thrift certificates in account, passbook, or certificate form which are redeemable and payable upon demand to the owner.

SEC. 2. Section 18210 of the Financial Code is amended to read:

18210. (a) Except as provided in Sections 18205.5 and 18209 and subject to subdivision (b) and (c), an industrial loan company shall not make any loan or purchase or discount any note secured primarily by real property unless the loan or other obligation is repayable in substantially equal weekly, semimonthly, monthly, or quarterly installments during its term, which shall not exceed 30 years and 30 days from the date the loan or other obligation is made or acquired by the company. Equal installment requirements shall not apply to adjustable or variable rate loans or obligations made or purchased by the industrial loan company in accordance with Title VIII of the Garn-St. Germaine Depository Institutions Act of 1982 and

any applicable regulations, guidelines, and policies adopted thereunder. However, an industrial loan company may make loans secured by first trust deeds on real property containing single family, or one to four residential, units provided that the repayment period for each loan does not exceed 40 years and 30 days from the date the loan is made by the company. All loans with repayment periods in excess of 30 years and 30 days shall not exceed in the aggregate 5 percent of all outstanding loans and obligations of the company.

(b) Any consumer loan or any purchase or discount of any consumer obligation having a term in excess of three years from the date the loan or other obligation is made or acquired by the company shall be secured solely by real property or solely by personal property. However, if the original principal amount of the consumer loan or obligation is twenty thousand dollars ($20,000) or more, then the loan or obligation shall be secured solely by real property or solely by personal property, or by both real property and personal property. All loans and obligations made and purchased pursuant to this subdivision shall be repayable in installments and within a term not to exceed the limitations set forth in subdivision (a), except that consumer loans or obligations secured solely by personal property shall have a term not to exceed the term provided for in Section 18205 and except as otherwise may be provided for in Sections 18207, 18208, and 18209. The equal installment requirements set forth in subdivision (a) shall not apply to loans or obligations made or purchased by the industrial loan company in accordance with Title VIII of the Garn-St. Germaine Depository Institutions Act of 1982 and any applicable regulations, guidelines, and policies adopted thereunder.

(c) In order to ensure the safety and soundness of industrial loan companies and to avoid an unreasonable concentration of loans and obligations that could result in balloon payments, all loans and obligations with a term in excess of 15 years and 30 days shall be repaid in substantially equal weekly, semimonthly, monthly, or quarterly installments during their term.

SEC. 3. Section 18321 of the Financial Code is amended to read:

18321. (a) Nothing in this division authorizes an industrial loan company to receive demand deposits.

(b) Subject to Section 18315, an industrial loan company that is a member of the Federal Deposit Insurance Corporation pursuant to Section 18521.5 may use the term "certificate of deposit" as defined in Section 18003.6 with respect to an investment certificate that does not authorize either of the following:

(1) Redemption prior to its maturity.

(2) Reduction of the interest rate payable thereon other than a variable interest rate.

SEC. 4. Section 18437 of the Financial Code is amended to read:

18437. (a) Except as provided in subdivision (b), an industrial loan company shall not make loans to, or purchase any obligations

from, persons who do not reside or have a place of business in the State of California, unless those loans or obligations comply with all of the following conditions:

(1) If the loan or obligation is unsecured, then only if the loan or obligation bears the unqualified written guaranty of a financially responsible person, considering the amount of the obligation, who resides or has a place of business in the State of California.

(2) If the documents and security for the loan or obligation and all records relating to the transaction are in California at the time the loan or obligation is made or acquired and are thereafter kept in California while the loan or obligation remains unsatisfied, except that where the security is aircraft, the security need not be in California at the time the loan or obligation is made or acquired, nor need it thereafter be held in California while the loan or obligation remains unsatisfied.

(b) Notwithstanding subdivision (a), an industrial loan company may make loans to, or purchase any obligations from, persons who do not reside or have a place of business in the State of California not to exceed 25 percent, in the aggregate, of an industrial loan company's total assets. Upon application to and approval by the commissioner, an industrial loan company may increase its loans to, or purchases of obligations from, persons who do not reside or have a place of business in this state not to exceed 50 percent, in the aggregate, of an industrial loan company's total assets. The application shall include all of the following information:

(1) A description of the company's proposed plan of business.

(2) The character, business qualifications, and other experience of the proposed officers and managers directing the line of business for which authorization is requested.

(3) Any other facts and circumstances bearing on the proposal that, as determined by the commissioner, may be relevant.

(c) This section does not apply to loans made to, or acquired from, persons who do not reside or have a place of business in this state if all of the following conditions are met:

(1) The loans are for the purchase or refinance of single- or multi-family residential property or nonresidential property.

(2) The loans are salable in the secondary market as evidenced by commitments to buy by a buyer in the secondary market.

(3) The loans are owned by the industrial loan company for 90 days or less.

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.

CHAPTER 346

An act to amend Section 917.7 of the Code of Civil Procedure, and to amend Section 300.2 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 917.7 of the Code of Civil Procedure is amended to read:

917.7. The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child in any civil action, in an action filed under the Juvenile Court Law, or in a special proceeding, or the provisions of a judgment or order for the temporary exclusion of a party from a dwelling, as provided in the Family Code. However, the trial court may in its discretion stay execution of these provisions pending review on appeal or for any other period or periods that it may deem appropriate. Further, in the absence of a writ or order of a reviewing court providing otherwise, the provisions of the judgment or order allowing, or eliminating restrictions against, removal of the minor child from the state are stayed by operation of law for a period of seven calendar days from the entry of the judgment or order by a juvenile court in a dependency hearing, or for a period of 30 calendar days from the entry of judgment or order by any other trial court. The periods during which these provisions allowing, or eliminating restrictions against, removal of the minor child from the state are stayed, are subject to further stays as ordered by the trial court or by the juvenile court pursuant to this section.

SEC. 2. Section 300.2 of the Welfare and Institutions Code is amended to read:

300.2. Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of

children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment. In addition, the provisions of this chapter ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the child.

CHAPTER 347

An act to amend Sections 22203, 22251, 22305, 22330, 22467, and 22551 of the Financial Code, relating to finance lenders.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 22203 of the Financial Code is amended to read:

22203. "Consumer loan" means a loan, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for personal, family, or household purposes. For purposes of determining whether a loan is a consumer loan, the lender may rely on any written statement of intended purposes signed by the borrower. The statement may be a separate statement signed by the borrower, or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes. Nothing in this section shall authorize the taking of real property as security, except as specified in Section 22330.

SEC. 2. Section 22251 of the Financial Code is amended to read:

22251. Any section that refers to this section does not apply to any loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more if that provision is not used for the purpose of evading this division. In determining under Section 22250, 22303, or 22304 or any section that refers to this section whether a loan is a loan of a bona fide principal amount of the amount specified in that section or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the following principles apply:

(a) If a borrower applies for a loan in a bona fide principal amount of less than the specified amount and a loan to that borrower of a bona

fide principal amount of the specified amount or more if made by a licensed finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the bona fide principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more and the regulatory ceiling provisions shall be deemed to be used for the purpose of evading this division unless the loan complies with the other provisions of the section that includes the regulatory ceiling provisions.

(b) If a loan made by a licensed finance lender is in a bona fide principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the loan or the bona fides of the amount thereof or to indicate that the regulatory ceiling provisions are used for the purpose of evading this division.

(c) For the purposes of determining whether the loan amount exceeds a regulatory ceiling, the "bona fide principal amount" shall not be comprised of any charges or any other fees or recompense specified in Sections 22200, 22201 (including, but not limited to, amounts paid for insurance of the types specified in Sections 22313 and 22314), 22202, 22305, 22316, 22317, 22318, 22319, 22320, 22320.5, and 22336. Nothing in this subdivision shall be construed to prevent those specified charges, fees, and recompense that have been earned and remain unpaid in an existing loan from being considered as part of the bona fide principal amount of a new loan to refinance that existing loan, provided the new loan is not made for the purpose of circumventing a regulatory ceiling provision. This subdivision is intended to define the meaning of "bona fide principal amount" as used in this division solely for the purposes of determining whether the loan amount exceeds a regulatory ceiling, and is not intended to affect the meaning of "principal" for any other purpose.

SEC. 3. Section 22305 of the Financial Code is amended to read:

22305. In addition to the charges authorized by Section 22303 or 22304, a licensee may contract for and receive an administrative fee, which shall be fully earned immediately upon making the loan, with respect to a loan of a bona fide principal amount of not more than two thousand five hundred dollars ($2,500) at a rate not in excess of 5 percent of the principal amount (exclusive of the administrative fee) or fifty dollars ($50), whichever is less, and with respect to a loan of a bona fide principal amount in excess of two thousand five hundred dollars ($2,500), at an amount not to exceed seventy-five dollars

($75). No administrative fee may be contracted for or received in connection with the refinancing of a loan unless at least one year has elapsed since the receipt of a previous administrative fee paid by the borrower. Only one administrative fee may be contracted for or received until the loan has been repaid in full. For purposes of this section, "bona fide principal amount" shall be determined in accordance with Section 22251.

SEC. 4. Section 22330 of the Financial Code is amended to read:

22330. No licensee shall take a deed of trust, mortgage, or lien upon real property as security for any loan made under this division, except any lien as is created by law upon the recording of an abstract of judgment. This section shall not apply to any loan of a bona fide principal amount of five thousand dollars ($5,000) or more as determined in accordance with Section 22251.

SEC. 5. Section 22467 of the Financial Code is amended to read:

22467. (a) Any section that refers to this section or that is subject to Section 22251 does not apply to any open-end loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more, or to a duly licensed finance lender in connection with any such loan if that provision is not used for the purpose of evading this division.

(b) In determining whether an open-end loan is an open-end loan of a bona fide principal amount specified in any section in this division or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the open-end loan shall be deemed to be for that amount or more if both the following criteria are met:

(1) The line of credit is equal to or more than the bona fide principal amount of the specified amount.

(2) The initial advance was equal to or more than the bona fide principal amount of the specified amount.

(c) A subsequent advance of money of less than the specified amount pursuant to the open-end loan agreement between a borrower and a licensed finance lender shall be deemed to be a loan of a bona fide principal amount of the specified amount if the criteria of paragraphs (1) and (2) of subdivision (b) have been met, even though the actual unpaid balance after the advance or at any other time is less than the bona fide principal amount of the specified amount.

(d) Notwithstanding subdivisions (b) and (c), the amount of the line of credit of an unsecured open-end loan shall be the criterion to determine whether an unsecured open-end loan is of a bona fide principal amount or more specified in any section in this division.

(e) For the purposes of determining whether the loan amount exceeds a regulatory ceiling, the provisions of subdivision (c) of Section 22251 shall apply to open-end loans.

SEC. 6. Section 22551 of the Financial Code is amended to read:

22551. In determining whether a loan is a loan of a bona fide principal amount of the specified amount or more, the following principles shall apply:

(a) If a borrower applies for a loan in a bona fide principal amount of less than the specified amount and a loan to that borrower of a bona fide principal amount of the specified amount or more is made by a licensed finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the bona fide principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more.

(b) A subsequent advance of money of less than a bona fide principal amount of the specified amount pursuant to a revolving or open-end loan agreement or similar agreement between a borrower and a licensed finance lender which gives the borrower the right to draw upon all or any part of the line of credit, or a loan agreement providing for the making of advances to the borrower from time to time up to an aggregate maximum amount which gives the borrower the right to draw all or any part of the total amount, shall be deemed to be a loan of a bona fide principal amount of the specified amount or more if the line of credit or the aggregate maximum amount is a bona fide principal amount of the specified amount or more and the initial advance was a bona fide principal amount of the specified amount or more even though the actual unpaid balance after the advance or at any other time is less than a bona fide principal amount of the specified amount.

(c) If a loan made by a licensed finance lender has a bona fide principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments, or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the bona fides of the amount thereof.

(d) For the purposes of this section, "the specified amount" means five thousand dollars ($5,000).

(e) For the purposes of determining whether the loan amount exceeds a regulatory ceiling, the "bona fide principal amount" shall not be comprised of any charges or any other fees or recompense specified in Sections 22500, 22501, and 22601. Nothing in this subdivision shall be construed to prevent those specified charges, fees, and recompense that have been earned and remain unpaid in an existing loan from being considered as part of the bona fide principal amount of a new loan to refinance that existing loan, provided the new loan is not made for the purpose of circumventing a regulatory ceiling provision. This subdivision is intended to define

the meaning of "bona fide principal amount" as used in this division solely for the purposes of determining whether the loan amount exceeds a regulatory ceiling, and is not intended to affect the meaning of "principal" for any other purpose.

CHAPTER 348

An act to add Sections 19225 and 21015.5 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 19225 is added to the Revenue and Taxation Code, to read:

19225. (a) (1) The Franchise Tax Board shall notify in writing the person described in Section 19221 of the filing or recording of a notice of state tax lien as provided under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

(2) The notice required under paragraph (1) shall be mailed in accordance with Section 2885 of the Civil Code no less than five business days after the day of the filing of the notice of lien.

(3) The notice shall specify, in simple and nontechnical terms, all of the following:

(A) The amount of unpaid tax.

(B) The right of the person to request a review during the 15-day period beginning on the day after the five-day period described in paragraph (2).

(C) The independent departmental administrative review available to the taxpayer with respect to the lien and the procedures to obtain that review.

(D) The procedures relating to the release of liens on property.

(b) (1) The Taxpayers' Rights Advocate shall establish procedures for an independent departmental administrative review requested under subparagraph (C) of paragraph (3) of subdivision (a).

(2) A person shall be entitled to only one review under this section with respect to the taxable period to which the unpaid tax specified in subparagraph (A) of paragraph (3) of subdivision (a) relates.

(3) An independent departmental administrative review under this subdivision shall be conducted by an officer or employee, or officers or employees, who have had no prior involvement with respect to the unpaid tax specified in subparagraph (A) of paragraph (3) of subdivision (a) before the first review under this section or

Section 21015.5. A taxpayer may waive the requirement of this paragraph. Administrative review under this paragraph is not subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code.

(4) To the extent practicable, a review under this section shall be held in conjunction with a review under Section 21015.5.

(c) For purposes of this section, subdivision (c) of Section 21015.5 shall apply.

(d) This section is operative for any collection action initiated after the date which is 180 days after the effective date of the act adding this section.

SEC. 2. Section 21015.5 is added to the Revenue and Taxation Code, to read:

21015.5. (a) (1) No levy may be made on any property or property right of any person unless the board has notified the person in writing of his or her rights as described in subparagraph (C) of paragraph (3) before the levy is made. Except as provided in subdivision (f), the notice shall be required only once for the taxable period to which the unpaid tax specified in subparagraph (A) of paragraph (3) relates. The notice shall not be required if the unpaid tax for which notice would otherwise be required under this paragraph is consolidated for collection purposes with a preexisting unpaid tax for which notice has been given under this paragraph.

(2) The notice required by paragraph (1) shall be made by first-class mail to the address of record not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period. Notice under paragraph (1) is not required if previous mail to the same address was returned undelivered with no forwarding address.

(3) The notice required under paragraph (1) shall specify, in simple and nontechnical terms, all of the following:

(A) The amount of unpaid tax.

(B) A telephone number to call in the event of any questions.

(C) The right of the person to request a review during the 30-day period described in paragraph (2).

(D) The proposed action or actions that may be taken by the Franchise Tax Board and the rights of the person with respect to the action or actions, including a brief statement that sets forth all of the following:

(i) The provisions of California law relating to levy and sale of property.

(ii) The procedures applicable to the levy and sale of property under California law.

(iii) The independent departmental administrative review available to the taxpayers with respect to the levy and sale and the procedures to obtain that review.

(iv) The alternatives available to taxpayers that could prevent levy on property, including installment agreements under Section 19008.

(v) California legal requirements and procedures with respect to the release of levy.

(b) (1) The Taxpayers' Rights Advocate shall establish procedures for an independent departmental administrative review for taxpayers who request review under subparagraph (C) of paragraph (3) of subdivision (a).

(2) A person shall be entitled to only one review under this section with respect to the taxable period to which the unpaid tax specified in subparagraph (A) of paragraph (3) of subdivision (a) relates.

(3) An independent departmental administrative review under this subdivision shall be conducted by an officer or employee, or officers or employees, who have had no prior involvement with respect to the unpaid tax specified in subparagraph (A) of paragraph (3) of subdivision (a) before the first review under this section or Section 19225. A taxpayer may waive the requirement of this paragraph. Administrative review under this subdivision is not subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code.

(c) (1) The person or persons conducting the independent departmental administrative review shall obtain verification that the requirements of any applicable law or administrative procedures have been met by the board.

(2) The taxpayer may raise during the review any relevant issue relating to the unpaid tax or the lien, including any of the following:

(A) Appropriate spousal defenses.

(B) Challenges to the appropriateness of collection actions.

(C) Offers of collection alternatives, that may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(3) The determination of the person or persons conducting the review under this subdivision shall take into consideration all of the following:

(A) The verification presented under paragraph (1).

(B) The issues raised under paragraph (2).

(C) Whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action not be more intrusive than necessary.

(4) An issue may not be raised during the review if:

(A) The issue was raised and considered at a previous review under this section or in any other administrative or judicial proceeding.

(B) The person seeking to raise the issue participated meaningfully in the review or proceeding.

This paragraph does not apply to any issue with respect to a change in circumstances of that person that affects the determination.

(d) If review is requested under subparagraph (C) of paragraph (3) of subdivision (a), the levy actions that are the subject of the requested review shall be suspended for the period during which the review is pending. In no event shall any period expire before the 15th day after the day upon which there is a final determination in the review.

(e) This section does not apply if the board has made a finding under Section 19081 or Section 19082 that the collection of tax is in jeopardy except that the taxpayer shall be given the opportunity for the review described in this section within a reasonable period of time after the levy.

(f) If the board holds in abeyance the collection of a liability imposed under Part 10 (commencing with Section 17001) or Part 10.2 (commencing with Section 18401), that is final and otherwise due and payable, for a period in excess of six months from the date the hold is first placed on the account, the board shall thereafter mail to the taxpayer a notice prior to issuing a levy or filing or recording a notice of state tax lien.

(g) This section is operative for collection actions initiated after the date which is 180 days after the effective date of the act adding this section.

CHAPTER 349

An act to amend Sections 1091 and 1091.5 of the Government Code, relating to conflicts of interest.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10

percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

SEC. 2. Section 1091.5 of the Government Code is amended to read:

1091.5. (a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.

(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.

(4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.

(9) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the

body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(11) Except as provided in subdivision (b), that of an officer or employee of or a person having less than a 10-percent ownership interest in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor, or creditor.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

CHAPTER 350

An act to amend Section 668 of, and to add Section 668.5 to, the Penal Code and to amend Section 6600 of the Welfare and Institutions Code, relating to punishment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 668 of the Penal Code is amended to read:

668. Every person who has been convicted in any other state, government, country, or jurisdiction of an offense for which, if committed within this state, that person could have been punished under the laws of this state by imprisonment in the state prison, is punishable for any subsequent crime committed within this state in the manner prescribed by law and to the same extent as if that prior conviction had taken place in a court of this state. The application of this section includes, but is not limited to, all statutes that provide for an enhancement or a term of imprisonment based on a prior conviction or a prior prison term.

SEC. 2. Section 668.5 is added to the Penal Code, to read:

668.5. An offense specified as a prior felony conviction by reference to a specific code section shall include any prior felony conviction under any predecessor statute of that specified offense that includes all of the elements of that specified offense. The application of this section includes, but is not limited to, all statutes that provide for an enhancement or a term of imprisonment based on a prior conviction or a prior prison term.

SEC. 3. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

For purposes of this subdivision, a prior finding of not guilty by reason of insanity for an offense described in subdivision (b), a conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b), a conviction prior to July 1, 1977, for an offense described in subdivision (b), a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another jurisdiction for an offense that includes all the elements of an offense described in subdivision (b), shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and

result in a conviction or a finding of not guilty by reason of insanity, as provided in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

SEC. 4. This act is intended to be declaratory of existing law as contained in People v. Butler (1998) 68 Cal.App.4th 421, at pages 435-441.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify the qualification of prior convictions under predecessor statutes at the earliest possible time so as to avoid confusion regarding their use, it is necessary for this act to take effect immediately.

CHAPTER 351

An act to amend Section 19853.5 of, and to amend and renumber Section 19846A of, the Business and Professions Code, and to amend Section 62 of Chapter 867 of the Statutes of 1997, relating to gambling, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 19846A of the Business and Professions Code is amended and renumbered to read:

19846. Except as otherwise provided by statute or regulation, every person who, by statute or regulation, is required to hold a state license shall obtain the license prior to engaging in the activity or occupying the position with respect to which the license is required. Every person who, by order of the commission, is required to apply for a gambling license or a finding of suitability shall file the application within 30 calendar days after receipt of the order.

SEC. 2. Section 19853.5 of the Business and Professions Code is amended to read:

19853.5. The division shall furnish to the applicant supplemental forms, which the applicant shall complete and file with the division. These supplemental forms shall require, but shall not be limited to requiring, complete information and details with respect to the applicant's personal history, habits, character, criminal record, business activities, financial affairs, and business associates, covering at least a 10-year period immediately preceding the date of filing of the application. Each applicant shall submit two sets of fingerprints on forms provided by the division. The division may submit one fingerprint card to the United States Federal Bureau of Investigation.

SEC. 3. Section 62 of Chapter 867 of the Statutes of 1997 is amended to read:

Sec. 62. (a) For the purposes of this section, "provisional license" means a license that is either granted by operation of law pursuant to this section, or is issued by the Director of the Division of Gambling Control pursuant to this section, and authorizes the holder to own and operate a gambling establishment, as defined by the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code), as enacted by this act. The issuance of a provisional license creates no vested right to the issuance of a state gambling license. A provisional license is held subject to all terms and conditions under which a state gambling license is held pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code), as enacted by this act.

(b) (1) Every person possessing a valid registration, issued pursuant to former Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code, as it read immediately prior to its repeal by this act, and which expires as of January 1, 1998, shall be deemed, as of January 1, 1998, to hold a provisional license to conduct those activities authorized by the registration.

(2) (A) Every owner of a gaming club who possesses a valid registration issued pursuant to former Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code, as it read immediately prior to its repeal by this act, if the license has expired as of January 1, 1998, shall be deemed to hold a provisional license to own, manage, or operate all or a part of another gambling establishment, or of other gambling establishments, if all of the

following conditions are satisfied with respect to the other gambling establishment or establishments:

(i) The gambling establishment, on January 1, 1998, was owned by a person holding a provisional license pursuant to this subdivision.

(ii) Acquisition of the ownership interest is completed no later than June 30, 1998.

(iii) The applicant has deposited all moneys as required pursuant to Section 19855 of the Business and Professions Code, as enacted by this act.

(iv) The applicant has deposited with the division a license fee calculated as the amount specified for the appropriate level of operation in subdivision (a) of Section 19941 of the Business and Professions Code, as enacted by this act.

(B) A provisional license granted in respect to a gambling establishment by operation of subparagraph (A) shall expire on July 30, 1998, unless, on or before that date, the holder of the provisional license files an application for a gambling license with respect to that gambling establishment under the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code), as enacted by this act.

(3) Until a provisional licensee is summoned pursuant to subdivision (e), no other state gambling license and no key employee license shall be required in connection with the operation that is owned, managed, or operated by a person holding a provisional license. Nothing in this paragraph shall relieve any person who, on or after the effective date of this act, acquires an ownership interest in a gambling establishment, from the provisions of Section 19840 of the Business and Professions Code, as enacted by this act. Upon payment of the fees described in this section, the provisional license shall be valid until the earlier of the following events:

(A) December 31, 1998.

(B) The granting or denial of an application for a gambling license.

(c) Until July 1, 1998, the Director of the Division of Gambling Control may issue a provisional license to any person who submitted a completed application for registration pursuant to former Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code, as it read immediately prior to its repeal by this act, if all of the following are true:

(1) The director determines that the applicant is not disqualified based on any of the reasons for which an application for registration could have been denied or revoked under former Section 19809 or 19810 of the Business and Professions Code as those sections read immediately prior to repeal by this act.

(2) The applicant has paid all fees required pursuant to Section 19855 of the Business and Professions Code, as enacted by this act, less any fees paid pursuant to Section 19808 of the Business and

Professions Code, as that section read immediately prior to its repeal by this act.

(3) The applicant has deposited with the division a license fee calculated as the amount specified for each level of operation in subdivision (b) of Section 19941 of the Business and Professions Code, as enacted by this act.

(d) Every person holding a provisional license pursuant to subdivision (b), who desires that the provisional license be converted to a gambling license under the Gambling Control Act enacted by this act shall, no later than January 31, 1998, deposit with the Division of Gambling Control a license fee calculated as the amount specified for the appropriate level of operation in subdivision (b) of Section 19941 of the Business and Professions Code, as enacted by this act.

(e) (1) Commencing July 1, 1998, the Division of Gambling Control shall summon persons holding provisional licenses for the purpose of applying for gambling licenses under the Gambling Control Act enacted by this act. Thereafter, except as otherwise provided herein, the license application process shall proceed as an initial application for licensure in accordance with the provisions of the Gambling Control Act, including the advance deposit of fees for investigation of the application or applications, if any.

(2) The division shall not require an applicant who holds a provisional license pursuant to subdivision (b) to furnish, in connection with an application for licensure, information or documentation that is presently in the possession of the Department of Justice by virtue of having conducted a prior investigation of the applicant pursuant to former Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code, as it read immediately prior to its repeal by this act.

(f) If an application for a gambling license is granted, and upon payment of the fees specified in the Gambling Control Act, a gambling license may be issued to the owner of a gambling enterprise, to expire not later than 12 months thereafter. If this license is issued prior to December 31, 1998, the licensee shall be entitled to a credit, if any, for the fee paid pursuant to subdivision (d).

(g) Notwithstanding subdivision (a) of Section 19847, there shall be a rebuttable presumption that every natural person who, on December 31, 1997, holds a valid and unexpired registration issued pursuant to former Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code, as it read immediately prior to its repeal by this act, is suitable for licensure pursuant to this act.

(h) If an application for a gambling license is denied, the applicant shall be entitled to a pro rata refund of the fee paid pursuant to subdivision (d), and any unused deposit of investigative fees.

(i) The Division of Gambling Control may extend a provisional license if, prior to the expiration of the license, the holder of the license requests an extension, pays all applicable fees, and the

provisional licensee's gambling establishment is located in a city, county, or city and county that has a gambling ordinance that complies with the Gambling Control Act. Thereafter, the process described in subdivisions (e), (f), and (g) shall apply in similar fashion.

(j) No application for a state gambling license may be submitted to the Division of Gambling Control prior to July 1, 1998. It is the intent of the Legislature that the division and the Gambling Control Board shall be fully operative by July 1, 1998.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide continuity in the regulation and oversight of provisional licensees by the Division of Gambling Control at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 352

An act to amend Section 70 of the Revenue and Taxation Code, relating to property taxation, to take effect immediately, tax levy.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 70 of the Revenue and Taxation Code is amended to read:

70. (a) "Newly constructed" and "new construction" means:

(1) Any addition to real property, whether land or improvements (including fixtures), since the last lien date; and

(2) Any alteration of land or of any improvement (including fixtures) since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use.

(b) Any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation of that improvement or fixture.

(c) Notwithstanding the provisions of subdivisions (a) and (b), where real property has been damaged or destroyed by misfortune or calamity, "newly constructed" and "new construction" does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Any reconstruction of real property, or portion thereof, that is not

substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion that exceeds substantially equivalent reconstruction shall have a new base year value determined pursuant to Section 110.1.

(d) (1) Notwithstanding the provisions of subdivisions (a) and (b), where a structure must be improved to comply with local ordinances on seismic safety, "newly constructed" and "new construction" does not mean the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with the local ordinance. This exclusion shall remain in effect during the first 15 years following that reconstruction or improvement (unless the property is purchased or changes ownership during that period, in which case the provisions of Chapter 2 (commencing with Section 60) of this division shall apply).

(2) In the sixteenth year following the reconstruction or improvement referred to in paragraph (1), the assessor shall place on the roll the current full cash value of the portion of reconstruction or improvement to the structure that was excluded pursuant to this subdivision.

(3) The governing body that enacted the local ordinance shall issue a certificate of compliance upon the request of the owner who, pursuant to a notice or permit issued by the governing body that specified that the reconstruction or improvement is necessary to comply with a seismic safety ordinance, so reconstructs or improves his or her structure in accordance with the ordinance. The certificate of compliance shall be filed by the property owner with the county assessor on or before the following April 15. The provisions of this subdivision shall not apply to any structure for which a certificate is not filed.

(e) (1) Notwithstanding the provisions of subdivisions (a) and (b), where a tank must be improved, upgraded, or replaced to comply with federal, state, and local regulations on underground storage tanks, "newly constructed" and "new construction" does not mean the improvement, upgrade, or replacement of a tank to meet compliance standards, and the improvement, upgrade, or replacement shall be considered to have been performed for the purpose of normal maintenance and repair.

(2) Notwithstanding the provisions of subdivisions (a) and (b), where a structure, or any portion thereof, was reconstructed, as a consequence of completing work on an underground storage tank to comply with federal, state, and local regulations on these tanks, timely reconstruction of the structure shall be considered to have been performed for the purpose of normal maintenance and repair where the structure, or portion thereof, after reconstruction is substantially equivalent to the prior structure in size, utility, and function.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 353

An act to amend Section 998 of the Code of Civil Procedure, relating to offers to compromise.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 998 of the Code of Civil Procedure is amended to read:

998. (a) The costs allowed under Sections 1031 and 1032 shall be withheld or augmented as provided in this section.

(b) Not less than 10 days prior to commencement of trial or arbitration (as provided in Section 1281 or 1295) of a dispute to be resolved by arbitration, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time.

(1) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly. In the case of an arbitration, the offer with proof of acceptance shall be filed with the arbitrator or arbitrators who shall promptly render an award accordingly.

(2) If the offer is not accepted prior to trial or arbitration, within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial or arbitration.

(3) For purposes of this subdivision, a trial or arbitration shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, and if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(c) (1) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant.

(2) (A) In determining whether the plaintiff obtains a more favorable judgment, the court or arbitrator shall exclude the postoffer costs.

(B) It is the intent of the Legislature in enacting subparagraph (A) to supersede the holding in Encinitas Plaza Real v. Knight, 209 Cal. App. 3d 996, that attorney's fees awarded to the prevailing party were not costs for purposes of this section but were part of the judgment.

(d) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the defendant to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the plaintiff, in addition to plaintiff's costs.

(e) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the costs under this section, from the time of the offer, shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment or award shall be entered accordingly.

(f) Police officers shall be deemed to be expert witnesses for the purposes of this section; plaintiff includes a cross-complainant and defendant includes a cross-defendant. Any judgment or award entered pursuant to this section shall be deemed to be a compromise settlement.

(g) This chapter does not apply to an offer that is made by a plaintiff in an eminent domain action.

(h) The costs for services of expert witnesses for trial under subdivisions (c) and (d) shall not exceed those specified in Section 68092.5 of the Government Code.

(i) This section shall not apply to labor arbitrations filed pursuant to memoranda of understanding under the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).

CHAPTER 354

An act to add Section 17210 to the Business and Professions Code, to add Section 1865 to the Civil Code, and to amend Section 365 of the Penal Code, relating to public accommodations.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 17210 is added to the Business and Professions Code, to read:

17210. (a) For purposes of this section, "hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, but it does not include any residential hotel as defined in Section 50519 of the Health and Safety Code. "Innkeeper" means the owner or operator of a hotel, or the duly authorized agent or employee of the owner or operator.

(b) For purposes of this section, "handbill" means, and is specifically limited to, any tangible commercial solicitation to guests of the hotel urging that they patronize any commercial enterprise.

(c) Every person (hereinafter "distributor") engages in unfair competition for purposes of this chapter who deposits, places, throws, scatters, casts, or otherwise distributes any handbill to any individual guest rooms in any hotel, including, but not limited to, placing, throwing, leaving, or attaching any handbill adjacent to, upon, or underneath any guest room door, doorknob, or guest room entryway, where either the innkeeper has expressed objection to handbill distribution, either orally to the distributor or by the posting of a sign or other notice in a conspicuous place within the lobby area and at all points of access from the exterior of the premises to guest room areas indicating that handbill distribution is prohibited, or the distributor has received written notice pursuant to subdivision (e) that the innkeeper has expressed objection to the distribution of handbills to guest rooms in the hotel.

(d) Every person (hereinafter "contractor") engages in unfair competition for purposes of this chapter who causes or directs any other person, firm, business, or entity to distribute, or cause the distribution of, any handbill to any individual guest rooms in any hotel in violation of subdivision (c) of this section, if the contractor has received written notice from the innkeeper objecting to the distribution of handbills to individual guest rooms in the hotel.

(e) Every contractor who causes or directs any distributor to distribute, or cause the distribution of, any handbills to any individual guest rooms in any hotel, if the contractor has received written notice from the innkeeper or from any other contractor or intermediary pursuant to this subdivision, objecting to the distribution of handbills to individual guest rooms in the hotel has failed to provide a written copy of that notice to each distributor prior to the commencement of distribution of handbills by the distributor or by any person hired or retained by the distributor for that purpose, or, within 24 hours following the receipt of the notice by the contractor if received after the commencement of distribution, and has failed to instruct and demand any distributor to not distribute, or to cease the distribution of, the handbills to individual guest rooms in any hotel for which such a notice has been received is in violation of this section.

(f) Any written notice given, or caused to be given, by the innkeeper pursuant to or required by any provision of this section shall be deemed to be in full force and effect until such time as the notice is revoked in writing.

(g) Nothing in this section shall be deemed to prohibit the distribution of a handbill to guest rooms in any hotel where the distribution has been requested or approved in writing by the innkeeper, or to any individual guest room when the occupant thereof has affirmatively requested or approved the distribution of the handbill during the duration of the guest's occupancy.

SEC. 2. Section 1865 is added to the Civil Code, to read:

1865. (a) For purposes of this section, "hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, but it shall not include any residential hotel as defined in Section 50519 of the Health and Safety Code. "Innkeeper" means the owner or operator of a hotel, or the duly authorized agent or employee of such owner or operator.

(b) For purposes of this section, "guest" means, and is specifically limited to, an occupant of a hotel whose occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(c) In addition to, and not in derogation of, any other provision of law, every innkeeper shall have the right to evict a guest in the manner specified in this subdivision if the guest refuses or otherwise fails to fully depart the guest room at or before the innkeeper's posted checkout time on the date agreed to by the guest, but only if both of the following conditions are met:

(1) If the guest is provided written notice, at the time that he or she was received and provided accommodations by the innkeeper, that the innkeeper needs that guest's room to accommodate an arriving person with a contractual right thereto, and that if the guest fails to fully depart at the time agreed to the innkeeper may enter the guest's guest room, take possession of the guest's property, re-key the door to the guest room, and make the guest room available to a new guest. The written notice shall be signed by the guest.

(2) At the time that the innkeeper actually undertakes to evict the guest as specified in this subdivision, the innkeeper in fact has a contractural obligation to provide the guest room to an arriving person.

In the above cases, the innkeeper may enter the guest's guest room, take possession of the guest's property, re-key the door to the guest room, and make the guest room available to a new guest. The evicted guest shall be entitled to immediate possession of his or her property upon request therefor, subject to the rights of the innkeeper pursuant to Sections 1861 to 1861.28, inclusive.

(d) As pertains to a minor, the rights of an innkeeper include, but are not limited to, the following:

(1) Where a minor unaccompanied by an adult seeks accommodations, the innkeeper may require a parent or guardian of the minor, or another responsible adult, to assume, in writing, full liability for any and all proper charges and other obligations incurred by the minor for accommodations, food and beverages, and other services provided by or through the innkeeper, as well as for any and all injuries or damage caused by the minor to any person or property.

(2) Where a minor is accompanied by an adult, the innkeeper may require the adult to agree, in writing, not to leave any minor 12 years of age or younger unattended on the innkeeper's premises at any time during their stay, and to control the minor's behavior during their stay so as to preserve the peace and quiet of the innkeeper's other guests and to prevent any injury to any person and damage to any property.

SEC. 3. Section 365 of the Penal Code is amended to read:

365. Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor. However, an innkeeper who has proceeded as authorized by Section 1865 of the Civil Code shall be rebuttably presumed to have acted with just cause or excuse for purposes of this section.

CHAPTER 355

An act to amend, repeal, and add Section 44015 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 44015 of the Health and Safety Code is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost limit specified in Section 44017.

(2) An economic hardship extension shall be issued, upon request of a qualified low-income motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-income vehicle owner would suffer an economic hardship if the extension is not issued, and that all appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section 44017.1 have been performed.

(d) No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that owner. However, a repair cost waiver or economic hardship extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as determined by the department. For waivers or extensions issued in the program operative on or after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per owner.

(2) Upon initial registration of all of the following: a direct import motor vehicle, a motor vehicle previously registered outside this state, a dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code, a motor vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall be valid for 90 days.

(f) Except as provided in Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle dealer shall be responsible for having a smog check inspection performed on, and a certificate of compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle is sold and registered to a retail buyer, whichever occurs first.

(g) A test may be made at any time within 90 days prior to the date otherwise required.

(h) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. Section 44015 of the Health and Safety Code is added, to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No

repair cost waiver shall exceed two years' duration. No repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost limit specified in Section 44017.

(2) An economic hardship extension shall be issued, upon request of a qualified low-income motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-income vehicle owner would suffer an economic hardship if the extension is not issued, and that all appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section 44017.1 have been performed.

(d) No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that owner. However, a repair cost waiver or economic hardship extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as determined by the department. For waivers or extensions issued in the program operative on or after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per owner.

(2) Upon initial registration of all of the following: a direct import motor vehicle, a motor vehicle previously registered outside this state, a dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code, a motor vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) Unless the certificate is issued to a licensed automobile dealer, a certificate of compliance or noncompliance shall be valid for 90 days. If the certificate is issued to a licensed automobile dealer, the certificate shall be valid for 180 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) This section shall become operative on January 1, 2002.

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.

CHAPTER 356

An act to add Section 8588.7 to the Government Code, relating to emergency services.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The ability of emergency response agencies, particularly those under mutual-aid agreements, to communicate during disaster situations is critical to saving lives and property.

(b) During recent disasters, such as the Loma Prieta earthquake, the Oakland-East Bay Hills Fire, and the Northridge earthquake, mutual-aid emergency response agencies experienced difficulties communicating because they operated on incompatible frequency bands.

(c) Compounding the problem is the fact that conventional communications' systems such as hard-wire telephones and cellular telephones are vulnerable to failing, particularly to the forces generated by earthquakes, placing a greater reliance on the communication capabilities of mutual-aid emergency response agencies.

(d) It is necessary for the state, in the interest of protecting the lives and property of its residents, to procure and install communication translators that will enable mutual-aid emergency response agencies that operate on incompatible frequencies to communicate.

SEC. 2. Section 8588.7 is added to the Government Code, to read:

8588.7. (a) The Office of Emergency Services shall procure mobile communication translators to enable mutual-aid emergency response agencies to communicate effectively while operating on incompatible frequencies.

(b) Translators shall be located in the San Francisco Bay area and the Los Angeles metropolitan area, made ready for use by local public safety officials by the Office of Emergency Services, and provided to the appropriate state-established mutual-aid region pursuant to Section 8600.

(c) The Office of Emergency Services shall implement this section only to the extent that funds are appropriated to the office for this purpose in the Budget Act or in other legislation.

CHAPTER 357

An act to amend Section 19605 of the Government Code, relating to state civil service.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 19605 of the Government Code is amended to read:

19605. (a) Supervisory employees, as defined in subdivision (g) of Section 3513, shall not be included within any demonstration project unless there are written agreements with respect to the demonstration project between the affected state agency and all verified supervisory employee organizations that represent supervisory employees covered by the demonstration project.

(b) Employees within any bargaining unit with respect to which a labor organization has not been accorded exclusive recognition shall not be included within any demonstration project unless the employer first meets and confers in good faith with the employees and any employee organizations representing the employees. "Meet and confer in good faith" means that the employer and employees and employee organizations shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement.

CHAPTER 358

An act to amend Section 5406 of, and to add Section 5406.6 to, the Labor Code, relating to workers' compensation.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. This act shall be known and may be cited as the Cliff Ojala Death Benefits Act.

SEC. 2. The Legislature finds and declares as follows:

(a) An HIV-infected worker may be asymptomatic for as long as 10 years.

(b) The current statute of limitations restricts the ability of the surviving spouse and other dependents of a worker who is infected with HIV in the workplace to file a workers' compensation claim for death benefits if the worker does not die of the disease within 240 weeks of the date of injury.

(c) It is the intent of the Legislature to ensure that the dependents of workers whose death is caused by an HIV infection sustained in the workplace will receive the death benefits provided by the Labor Code even though the death may occur more than 240 weeks after the date of the initial injury.

SEC. 3. Section 5406 of the Labor Code is amended to read:

5406. Except as provided in Section 5406.5 or 5406.6, the period within which may be commenced proceedings for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from:

(a) The date of death where death occurs within one year from date of injury; or

(b) The date of last furnishing of any benefits under Chapter 2 (commencing with Section 4550) of Part 2, where death occurs more than one year from the date of injury; or

(c) The date of death, where death occurs more than one year after the date of injury and compensation benefits have been furnished.

No such proceedings may be commenced more than one year after the date of death, nor more than 240 weeks from the date of injury.

SEC. 4. Section 5406.6 is added to the Labor Code, to read:

5406.6. (a) In the case of the death of a health care worker, a worker described in Section 3212, or a worker described in Section 830.5 of the Penal Code from an HIV-related disease, the period within which proceedings may be commenced for the collection of benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from the date of death, providing that one or more of the following events has occurred:

(1) A report of the injury or exposure was made to the employer or to a governmental agency authorized to administer industrial injury claims, within one year of the date of the injury.

(2) The worker has complied with the notice provisions of this chapter and the claim has not been finally determined to be noncompensable.

(3) The employer provided, or was ordered to provide, workers' compensation benefits for the injury prior to the date of death.

(b) For the purposes of this section, "health care worker" means an employee who has direct contact, in the course of his or her employment, with blood or other bodily fluids contaminated with blood, or with other bodily fluids identified by the Division of Occupational Safety and Health as capable of transmitting HIV, who is either (1) any person who is an employee of a provider of health care, as defined in subdivision (d) of Section 56.05 of the Civil Code, including, but not limited to, a registered nurse, licensed vocational nurse, certified nurse aide, clinical laboratory technologist, dental hygienist, physician, janitor, or housekeeping worker, or (2) an employee who provides direct patient care.

CHAPTER 359

An act to amend Section 1569.17 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. 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 apply to criminal convictions of the following persons:

(1) (A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.

(C) 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.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.

(F) 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.

(2) The following persons are exempt from requirements applicable under paragraph (1):

(A) A spouse, significant other, or close friend of a client shall be exempt if this person is visiting the client or provides direct care and supervision to that client only.

(B) A volunteer to whom all of the following apply:

(i) The volunteer is at the facility during normal waking hours.

(ii) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(iii) The volunteer spends no more than 16 hours per week at the facility.

(iv) The volunteer does not provide clients with assistance in dressing, grooming, bathing, or personal hygiene.

(v) The volunteer is not left alone with clients in care.

(C) A third-party contractor retained by the facility if the contractor is not left alone with clients in care.

(D) A third-party contractor or other business professional retained by a client and at the facility at the request or by permission of that client. These individuals shall not be left alone with other clients.

(E) Licensed or certified medical professionals are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(F) Employees of licensed home health agencies and members of licensed hospice interdisciplinary teams who have contact with a resident of a residential care facility at the request of the resident or resident's legal decisionmaker are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(G) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual resident at the request of, or with permission of, the resident, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(H) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(c) (1) (A) Subsequent to initial licensure, any person required to be fingerprinted pursuant to subdivision (b) 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 fingerprint card provided by the State Department of Social Services 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 licensee shall then submit these fingerprints 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 the State Department of Social Services determines, 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 on January 1, 1999.

CHAPTER 360

An act to add Section 12236 to the Government Code, relating to the Secretary of State, and making an appropriation therefor.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 12236 is added to the Government Code, to read:

12236. (a) The Secretary of State shall establish the Local Government Records Program to be administered by the State Archives to establish guidelines for local government records retention and to provide archival support to local agencies in this state.

(b) The Secretary of State shall establish, publish, update, and maintain on a permanent basis guidelines for local government records retention. The Secretary of State may consult with appropriate professional organizations representing city, county, and special district records administrators regarding the establishment of these guidelines.

(c) The program shall be primarily responsible for the performance of the following functions:

(1) Publish the guidelines developed pursuant to subdivision (b) in paper form initially and on the Internet web site for the Secretary of State.

(2) Monitor and review changes in state laws and administrative regulations that pertain to local government records retention.

(3) Monitor practices and procedures in records administration that have bearing on local government records retention and management.

(4) Update published guidelines on a current and timely basis as changes occur.

(5) Make supporting information about state laws and administrative regulations that pertain to local government records retention available to local government agencies.

(6) Function as the liaison for the State Archives with appropriate professional organizations.

(7) Maintain communication with individual local government agencies.

(8) Consult and provide information and advice to local government agencies on archival practices.

(9) Consult and provide information and advice to local government agencies on history and heritage.

SEC. 2. The sum of forty thousand dollars ($40,000) is hereby appropriated from the General Fund to the Secretary of State's office in order to carry out effectively the program established pursuant to this act. The moneys shall be used to establish and support one permanent archivist position.

CHAPTER 361

An act to add Section 6010.40 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. This act shall be known as the Pet Adoption Sales and Use Tax Relief Act of 1999.

SEC. 2. Section 6010.40 is added to the Revenue and Taxation Code, to read:

6010.40. "Sale" and "purchase," for the purpose of this part, do not include the transfer by a city, city and county, county, or other local government animal shelter or a nonprofit animal welfare organization of any animal to an individual for use as a pet, or any charges made by the government shelter or nonprofit organization for services in connection with the transfer of that animal, including, but not limited to, the spaying or neutering or future spaying or neutering of the animal, or any vaccination, future vaccination, or similar service. For purposes of this section, "nonprofit animal welfare organization" means any organization formed and operated for the primary purpose of prevention of abuse, neglect, or exploitation of animals and that qualifies for the exemption from taxation pursuant to Section 23701d.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall

not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 362

An act to amend Section 33080.2 of, and to add Section 33080.8 to, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. Section 33080.2 of the Health and Safety Code is amended to read:

33080.2. (a) When the agency presents the annual report to the legislative body pursuant to Section 33080.1, the agency shall inform the legislative body of any major violations of this part based on the independent financial audit report. The agency shall inform the legislative body that the failure to correct a major violation of this part may result in the filing of an action by the Attorney General pursuant to Section 33080.8.

(b) The legislative body shall review the report and take any action which it deems appropriate on the report submitted pursuant to Section 33080.1 no later than the first meeting of the legislative body occurring more than 21 days from the receipt of the report.

SEC. 2. Section 33080.8 is added to the Health and Safety Code, to read:

33080.8. (a) On or before April 1 of each year, the Controller shall compile a list of agencies that appear to have major violations of this part, based on the independent financial audit reports filed with the Controller pursuant to Section 33080.

(b) On or before June 1 of each year, for each major violation of each agency identified pursuant to subdivision (a), the Controller shall determine if the agency has corrected the major violation. Before making this determination, the Controller shall consult with each affected agency. In making this determination, the Controller may request and shall receive the prompt assistance of public officials and public agencies, including, but not limited to, the affected agencies, counties, and cities. If the Controller determines that an agency has not corrected the major violation, the Controller shall

send a list of those agencies and their major violations to the Attorney General for action pursuant to this section.

(c) For each agency that the Controller refers to the Attorney General pursuant to subdivision (b), the Controller shall notify the agency and the legislative body that the agency was on the list sent to the Attorney General. The Controller's notice shall inform the agency and the legislative body of the duties imposed by Section 33080.2.

(d) Within 45 days of receiving the list of agencies and major violations pursuant to subdivision (c), the Attorney General shall determine whether to file an action to compel the agency's compliance with this part. The time limit for the Attorney General to make this determination is directory and not mandatory. Any action shall be accompanied by an affidavit or affidavits setting forth facts that demonstrate a likelihood of success on the merits of the claim that the agency has a major violation of this part. The affidavit shall also certify that the agency and the legislative body were informed not less than 10 days prior to the date on which the action was filed.

(e) (1) On the earliest day that the business of the court will permit, but not later than 15 days after the filing of an action pursuant to this section, the court shall conduct a hearing to determine if good cause exists for believing that the agency has a major violation of this part and has not corrected that violation.

(2) If the court determines that no major violation exists or that the agency had a major violation but corrected the major violation, the court shall dismiss the action.

(3) If the court determines that there is good cause for believing that the agency has a major violation of this part and has not corrected that major violation, the court shall immediately issue an order that prohibits the agency from doing any of the following:

(A) Encumbering any funds or expending any money derived from any source except to pay the obligations designated in subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision (e) of Section 33334.12.

(B) Adopting a redevelopment plan.

(C) Amending a redevelopment plan except to correct the major violation that is the subject of the action.

(D) Issuing, selling, offering for sale, or delivering any bonds or any other evidence of indebtedness.

(E) Incurring any indebtedness.

(f) In a case that is subject to paragraph (3) of subdivision (e), the court shall also set a hearing on the matter within 30 days.

(g) If, on the basis of that subsequent hearing, the court determines that the agency has a major violation and has not corrected that violation, the court shall order the agency to comply with this part within 30 days. The order issued by the court pursuant to paragraph (3) of subdivision (e) shall continue in effect until the

court determines that the agency has corrected the major violation. If the court determines that the agency has corrected the major violation, the court may dissolve its order issued pursuant to paragraph (3) of subdivision (e) at any time.

(h) An action filed pursuant to this section to compel an agency to comply with this part is in addition to any other remedy, and is not an exclusive means to compel compliance.

(i) As used in this section, "major violation" means that, for the fiscal year in question, an agency did not:

(1) File an independent financial audit report that substantially conforms with the requirements of subdivision (a) of Section 33080.1.

(2) File a fiscal statement that includes substantially all of the information required by Section 33080.5.

(3) Establish time limits, as required by Section 33333.6.

(4) Establish a Low and Moderate Income Housing Fund, as required by subdivision (a) of Section 33334.3.

(5) Accrue interest earned by the Low and Moderate Income Housing Fund to that fund, as required by subdivision (b) of Section 33334.3.

(6) Initiate development of housing on real property acquired using moneys from the Low and Moderate Income Housing Fund or sell the property, as required by Section 33334.16.

(7) Adopt an implementation plan, as required by Section 33490.

CHAPTER 363

An act to amend Section 1424 of the Penal Code, relating to criminal law.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

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

SECTION 1. 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 court days before the motion is heard. The notice of motion shall contain a statement of the facts setting forth the grounds for the claimed disqualification and the legal authorities relied upon by the moving party and shall be supported by affidavits of witnesses who are competent to testify to the facts set forth in the affidavit. The district attorney or the Attorney General, or both, may file affidavits in opposition to the motion and 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 judge shall review the affidavits and

determine whether or not an evidentiary hearing is necessary. 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. If the motion is brought at or before the preliminary hearing, it may not be renewed in the trial court on the basis of facts that were raised or could have been raised at the time of the original motion.

(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 court 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.

CHAPTER 364

An act to repeal and add Chapter 5.5 (commencing with Section 12531) of Division 5 of the Business and Professions Code, relating to weights and measures, and making an appropriation therefor.

[Became law without Governor's signature. Filed with Secretary of State September 8, 1999.]

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

SECTION 1. Chapter 5.5 (commencing with Section 12531) of Division 5 of the Business and Professions Code is repealed.

SEC. 2. Chapter 5.5 (commencing with Section 12531) is added to Division 5 of the Business and Professions Code, to read:

CHAPTER 5.5. SERVICE AGENCIES FOR WEIGHING AND MEASURING DEVICES

Article 1. Definitions

12531. As used in this chapter, the following definitions are applicable:

(a) "Service agency" means any person, as defined in Section 12011, that for hire, award, commission, or any other payment of any kind, repairs a commercial device.

(b) "Service agent" means any person employed by a service agency to repair a commercial device.

(c) "Device" means any weighing or measuring equipment, contrivance, or instrument used, or designed to be used, for determining weight or measure, and includes any tool, appliance, or accessory used in connection therewith, that is used for commercial purposes as defined in subdivision (e) of Section 12500.

(d) "Placed in service" means to permit the use of a device that has been tested and found to be correct, as defined in subdivision (c) of Section 12500, and type approved, as provided for in Section 12500.5, or to submit a device to a sealer for verification prior to installation.

(e) "Correct" means any device that meets all of the tolerance and specification requirements of Section 12107.

(f) "Repair," in any of its variant forms, means to provide maintenance, or to install, adjust, recondition, or service a device.

Article 2. Registration

12532. (a) No person shall engage in business as a service agency unless registered by the Secretary of Food and Agriculture pursuant to this chapter and unless the current registration fee and any penalty has been paid.

(b) Applications for registration shall be in writing on a form prescribed by the department, and shall be accompanied by the required fee.

(c) A service agency shall forward to the department the name or names of service agents employed by them, with the appropriate fees required by Section 12535.

(d) A device may only be placed in service by a sealer or a service agency. A device used by a public utility in connection with

measuring gas, electricity, water, steam, or communication service subject to the jurisdiction of the Public Utility Commission is exempt from the requirements of this chapter.

(e) Except as provided in subdivision (f), no person who repairs a device is required to be registered if the device is placed into service by a sealer or service agency.

(f) Vapor measuring devices operating at greater than 11 inches water column shall be installed by a service agency.

(g) In the event of any change in the legal status of a registered service agency, the new legal entity shall obtain a new registration prior to operating as a service agency.

(h) A service agency may employ or designate a licensed service agent to act for the service agency and shall be responsible for all acts of that person.

12533. Prior to the issuance of its registration or in order to maintain its current registration, a service agency shall do all of the following:

(a) (1) Possess, or have available for use, standards and testing equipment necessary to meet the minimum testing requirements contained in the "Notes" section of the specific device regulation set forth in Division 9 (commencing with Section 4000) of Title 4 of the California Code of Regulations, for each type of device for which the service agency is providing service.

(2) When applicable, the standards and testing equipment shall meet the specifications and tolerances published in the most current National Institute of Standards and Technology 105 Series Handbooks for Field Standard Weights (NIST Class F), Field Standard Measuring Flasks, and Graduated Neck Type Volumetric Field Standards.

(b) Ensure that every service agent in its employ has a current service agent license.

(c) Possess a current copy of Division 9 (commencing with Section 4000) of Title 4 of the California Code of Regulations, Field Reference Manual.

12534. Commencing January 1, 2001, a service agency shall use suitable and sufficient standards that are permanently and uniquely identified, and have a current certificate of accuracy provided by the department or by a laboratory certified pursuant to Section 12314, in the determination of a correct device.

Article 3. Fees

12535. (a) An application for service agency registration shall be accompanied by an annual fee of two hundred dollars ($200) for a primary maintenance location, and one hundred dollars ($100) for each additional maintenance location of the applicant, and twenty-five dollars ($25) for every person employed by a service agency as a service agent.

(b) Each registration required by this chapter shall be renewed annually, on or before the first day of the first month of the service agency's registration year, by application to the department, accompanied by the annual registration fee. "Registration year" means the period of time beginning with the first day of the month the service agency is required to be registered in this state, and ending one year from date of issuance of the registration.

12536. Fees received by the department pursuant to this chapter shall be paid into the State Treasury to the credit of the Food and Agriculture Fund to be used for the administration and enforcement of this chapter.

12537. Sixty percent of the funds derived pursuant to this chapter shall be allocated by the secretary to counties that employ a sealer or director of weights and measures. The payment to each county shall be in proportion to the funds expended by the county in the enforcement of Division 5 (commencing with Section 12001).

Article 4. Examinations

12540. (a) Commencing on January 1, 2001, no person shall be employed by a service agency as a service agent unless he or she possesses a current license.

(b) Commencing on January 1, 2001, applicants for a service agent license shall pass a written examination on the laws and regulations governing weights and measures. A passing score of 70 percent or greater is required to qualify for a license pursuant to this chapter. Examinations developed by the department may be taken by appointment in any county sealer's office or at a location designated by the Division of Measurement Standards.

(c) An application for the examination to obtain a service agent license shall be in a form prescribed by the department and shall be accompanied by a fee established by the secretary to recover costs of examination administration, payable to the county in which the examination is given, or to the Division of Measurement Standards, if the examination is given by the department.

(d) Every service agent shall be reexamined every five years. To maintain a service agent license, the reexamination shall be taken and passed on or before the date on which the examination was last taken and passed.

Article 5. Advisory Committee

12541. (a) The department shall establish a seven-member advisory committee consisting of the following members:

(1) Two members representing registered service agencies.

(2) Two members representing county sealers or directors of weights and measures.

(3) One member representing device manufacturers.

(4) One member representing industry clients of service agencies.

(5) One member representing the general public.

(b) Except as provided in subdivision (c), the term of office of the members of the committee is three years. Vacancies shall be filled by the department for any unexpired term.

(c) Initial appointments to the committee shall be made as follows:

(1) One representative of registered service agencies, and one representative of county sealers or directors of weights and measures shall be appointed for one year.

(2) One representative of device manufacturers, one representative of county sealers or directors of weights and measures, and one representative of industry clients of service agencies shall be appointed for two years.

(3) One representative of registered service agencies, and one representative of the general public shall be appointed for three years.

(d) The committee shall be advisory to the department in all matters concerning the registration of service agencies.

Article 6. Disciplinary Action

12542. A service agency registration may be suspended for the actions of its service agents in violation of this division. A service agency's registration may be revoked or suspended, or may be denied by the department, for any violation of this chapter. Proceedings for the denial, revocation, or suspension of a registration shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall have all of the powers that are granted therein.

12543. A service agency's authorization to place devices into service, or to remove out-of-order notices may be suspended by a county sealer, within his or her county, pursuant to the notice and hearing provisions described in Section 12544 for violations of this division.

12544. (a) A county sealer intending to suspend the authorization of a service agency shall notify the service agency in writing of all of the following:

(1) The alleged violations to be used as the basis for suspension.

(2) The proposed duration of the suspension.

(3) The date the suspension is to begin, which may not be sooner than 20 days after a notice is mailed.

(4) The names of service agents to be affected by the suspension.

(5) The fact that the service agency or service agent shall be provided the opportunity for an investigational hearing prior to the suspension.

(6) The fact that the service agency or service agent may be represented by legal counsel.

(7) The fact that the service agency or service agent may appeal to the department prior to imposition of a suspension.

(b) A copy of the proposed action to the service agency shall be immediately forwarded to the department.

(c) The department may, as a result of the investigative hearing, declare the suspension to be effective in additional counties.

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.

CHAPTER 365

An act to amend Sections 3, 4, and 7 of Chapter 1080 of the Statutes of 1998, relating to the Bipartisan Commission on the Political Reform Act of 1974.

[Became law without Governor's signature. Filed with Secretary of State September 8, 1999.]

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

SECTION 1. Section 3 of Chapter 1080 of the Statutes of 1998 is amended to read:

Sec. 3. (a) Current Members and employees of the Legislature and registered lobbyists shall be ineligible for membership on the commission.

(b) No more than three members of the commission who are appointed by elected officials may be attorneys at law who devote more than 10 percent of their professional practice time to legislative, political campaign, or other politically related activities.

SEC. 2. Section 4 of Chapter 1080 of the Statutes of 1998 is amended to read:

Sec. 4. The commission shall conduct its initial meeting as soon as possible after January 1, 1999. The commission shall investigate and assess the effect of the Political Reform Act of 1974 on core political speech protected by the First Amendment to the United States Constitution, and on candidates for public office, campaign committees, the voters, state and local officials, and public employees, including the effect upon communications made or received by elected and other public officials to and from members

of the public and lobbyists. The commission shall review any ballot measures affecting the Political Reform Act of 1974 and shall assess the impact of independent expenditure committees. The commission shall report its findings to the Legislature, together with any recommendations to further the goals of the act, on or before June 30, 2000.

SEC. 3. Section 7 of Chapter 1080 of the Statutes of 1998 is amended to read:

Sec. 7. This act shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

CHAPTER 366

An act to amend Section 6394 of, and to add and repeal Section 6394.5 of, the Labor Code, relating to hazardous substances.

[Approved by Governor September 13, 1999. Filed with Secretary of State September 13, 1999.]

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

SECTION 1. Section 6394 of the Labor Code is amended to read:

6394. The preparer of an MSDS shall provide the department with a copy of the MSDS on each hazardous substance it manufactures. The preparer may transmit the MSDS to the department in either paper or electronic form. In the electronic filing of an MSDS, it is the responsibility of the preparer to protect any trade secret information contained in the MSDS during transmission to the department. Upon receipt by the department of the MSDS, it is the responsibility of the department to protect any trade secret information.

SEC. 2. Section 6394.5 is added to the Labor Code, to read:

6394.5. (a) The department shall adopt an electronic format for the electronic filing of an MSDS with the department and shall implement a system, by January 1, 2002, enabling electronic MSDS filings for purposes of complying with this section using the form. The department shall evaluate the use and effectiveness of the electronic format on relevant parties, including, but not limited to, the preparer of an MSDS, affected employers, and affected employees. The system shall employ electronic MSDS format, transmission, protocol, and authentication techniques that are, in the estimation of the department, compatible with those techniques developed and demonstrated by the Secretary for Environmental Protection pursuant to Part 2 (commencing with Section 71050) of Division 34 of the Public Resources Code.

(b) This section may not be implemented, and no information technology-related preparatory work may be undertaken in connection with this act before July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99.

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

CHAPTER 367

An act to add Section 633.6 to the Penal Code, relating to crime.

[Approved by Governor September 13, 1999. Filed with Secretary of State September 13, 1999.]

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

SECTION 1. Section 633.6 is added to the Penal Code, to read:

633.6. (a) Notwithstanding the provisions of this chapter, and in accordance with federal law, upon the request of a victim of domestic violence who is seeking a domestic violence restraining order, a judge issuing the order may include a provision in the order that permits the victim to record any prohibited communication made to him or her by the perpetrator.

(b) The Judicial Council shall amend its domestic violence prevention application and order forms to incorporate the provisions of this section.

CHAPTER 368

An act to amend Section 3018 of the Elections Code, relating to elections.

[Approved by Governor September 13, 1999. Filed with Secretary of State September 13, 1999.]

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

SECTION 1. Section 3018 of the Elections Code is amended to read:

3018. (a) Any voter using an absentee ballot may, prior to the close of the polls on election day, vote the ballot at the office of the elections official. The voter shall vote the ballot in the presence of an officer of the elections official or in a voting booth, at the discretion

of the elections official, but in no case may his or her vote be observed. Where voting machines are used the elections official may provide one voting machine for each ballot type used within the jurisdiction. Elections officials may provide electronic voting devices for this purpose provided that sufficient devices are provided to include all ballot types in the election.

(b) For purposes of this section, the office of an elections official may include satellite locations. Notice of the satellite locations shall be made by the elections official by the issuance of a general news release, issued not later than 14 days prior to voting at the satellite location. The news release shall set forth the following information:

(1) The satellite location or locations.

(2) The dates and hours the satellite location or locations will be open.

(3) A telephone number that voters may use to obtain information regarding absentee ballots and the satellite locations.

(c) Absentee ballots voted at a satellite location pursuant to this section shall be placed in an absentee voter identification envelope to be completed by the voter pursuant to Section 3011. However, if the elections official utilizes electronic voting devices, the absentee ballot may be cast on an electronic voting device.

CHAPTER 369

An act to repeal Section 4669.8 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 13, 1999. Filed with Secretary of State September 14, 1999.]

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

SECTION 1. Section 4669.8 of the Welfare and Institutions Code is repealed.

CHAPTER 370

An act to amend Section 19630 of the Business and Professions Code, and to amend Section 4155 of the Food and Agricultural Code, relating to fairs, and making an appropriation therefor.

[Approved by Governor September 14, 1999. Filed with Secretary of State September 14, 1999.]

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

SECTION 1. Section 19630 of the Business and Professions Code is amended to read:

19630. (a) Any unallocated balance from subdivision (a) of Section 19620.1 is hereby appropriated without regard to fiscal years for allocation by the Secretary of Food and Agriculture for capital outlay to California fairs for fair projects involving public health and safety, for fair projects involving major and deferred maintenance, for fair projects necessary due to any emergency, for projects that are required by physical changes to the fair site, for projects that are required to protect the fair property or installation, such as fencing and flood protection, and for the acquisition or improvement of any property or facility that will serve to enhance the operation of the fair.

(b) A portion of the funds subject to allocation pursuant to subdivision (a) may be allocated to California fairs for general operational support. It is the intent of the Legislature that these moneys be used primarily for those fairs whose sources of revenue may be limited for purposes specified in this section.

SEC. 2. Section 4155 of the Food and Agricultural Code is amended to read:

4155. The 22nd District Agricultural Association may expend up to seven hundred fifty thousand dollars ($750,000) annually for the operation of a fair pursuant to Section 4001 for the purposes enumerated therein from funds received by the district from a lease of district property for horse racing purposes. Any funds thereby received by the district in excess of this seven hundred fifty thousand dollars ($750,000) may be expended in furtherance of the master plan developed pursuant to Section 4156. Any of these funds that are not expended in this manner, or accumulated to be expended in furtherance of the master plan, including the amortization of revenue bonds, shall be transferred by the district to the General Fund upon executive order of the Director of Food and Agriculture.

CHAPTER 371

An act to amend Section 10072 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 14, 1999. Filed with Secretary of State September 14, 1999.]

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

SECTION 1. 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. Benefits provided under Chapter 2 (commencing with Section 11200) of Part 3 shall be staggered over a period of three calendar days, unless a county requests a waiver from the department and the waiver is approved, or in cases of hardship pursuant to subdivision (*l*).

(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 one electronic benefits transfer card to each adult member to enable 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.

(*l*) A county shall exempt an individual from the three-day staggering requirement under subdivision (c) on a case-by-case basis for hardship. Hardship includes, but is not limited to, the incurrence of late charges on an individual's housing payments.

(m) No later than May 1, 2000, the department shall prepare and submit a report to the Senate Health and Human Services Committee and the Assembly Committee on Human Services. The report shall contain estimates of the number of counties that may opt to issue cash benefits provided under Chapter 2 (commencing with Section 11200) of Part 3 by electronics benefits transfer and the amount of interest payments that would accrue to the counties pursuant to the three-day staggering requirement of subdivision (c).

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.

CHAPTER 372

An act to amend Sections 100825, 100830, 100835, 100837, 100840, 100845, 100850, 100852, 100855, 100860, 100865, 100870, 100880, 100885, 100890, 100895, 100910, and 100915 of, and to add Sections 100831, 100832, 100847, 100851, 100862, 100863, 100872, and 100907 to, the Health and Safety Code, relating to environmental laboratories.

[Approved by Governor September 14, 1999. Filed with Secretary of State September 14, 1999.]

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

SECTION 1. Section 100825 of the Health and Safety Code is amended to read:

100825. (a) Laboratories that perform, for regulatory purposes, analyses of drinking water, wastewater, hazardous wastes, and contaminated soils or sediments, or any combination of these, shall obtain a certificate pursuant to this article. Laboratories that perform analyses for pesticide residues pursuant to Section 110490 shall also obtain a certificate pursuant to this article. A laboratory may apply for NELAP accreditation if it chooses to meet NELAC standards and become eligible for recognition by other states and agencies that require or accept NELAP accreditation.

(b) In any arrangement between laboratories that involves the transfer of samples or portions of samples, the analyzing laboratory shall be identified in all sample reports and shall be the laboratory for purposes of certification or NELAP accreditation.

(c) For the purposes of this article:

(1) "Accreditation" means the recognition of a laboratory that is approved by a NELAP approved accrediting authority to conduct environmental analyses in those fields of testing specifically designated in Section 100862.

(2) "Approved third-party laboratory accreditation organization" or "ATPLAO" means a nongovernmental organization which has been approved by the department to audit environmental laboratories.

(3) "Certificate" means a document issued to a laboratory that has received certification or accreditation pursuant to this article.

(4) "Certification" means the granting of approval by the department to a laboratory that has met the standards and requirements of this chapter and the regulations adopted thereunder. Certification shall not include NELAP accreditation.

(5) "Corrective action report" means a written document signed by or on behalf of a person, entity, or laboratory which states the corrective actions proposed by the person, entity, or laboratory to correct the deficiencies or violations stated in a report of deficiencies.

(6) "Deficiency" means noncompliance with one or more of the requirements of this article or any rule or regulation adopted thereunder.

(7) "Laboratory" means any facility or vehicle that is owned by a person or persons, or by a public or private entity, and that is equipped and operated to carry out analyses in any of the fields of testing listed in Section 100860 or Section 100862.

(8) "NELAC" means the National Environmental Laboratory Accreditation Conference.

(9) "NELAC standards" refer to the standards found in EPA publication number 600/R-98/151, November 1998, and any subsequent amendments.

(10) "NELAP" means the National Environmental Laboratory Accreditation Program established by NELAC.

(11) "NELAP accredited laboratory" means a laboratory which has met the standards of NELAP and has been accredited by a primary or secondary NELAP recognized authority.

(12) "NELAP approved accrediting authority" means a state agency which is authorized by NELAC to accredit laboratories.

(13) "NELAP recognized primary accrediting authority" means a state agency which is responsible for the accreditation of environmental laboratories within that state.

(14) "NELAP recognized secondary accrediting authority" means a state agency which is authorized by NELAP to accredit environmental laboratories, within that state, which have been accredited by a NELAP approved accrediting authority in another state.

(15) "Performance based measurement system" or "PBMS" means methods which are alternate analytical methods of demonstrated adequacy of equivalence, as determined by the department, other state agencies, or the United States government.

(16) "Pesticide" means any substance that alone, in chemical combination, or in any formulation with one or more substances, is an "economic poison" within the meaning of Section 12753 of the Food and Agricultural Code or a "pesticide" as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(17) "Regulatory agency" means any federal, state, or local governmental agency that utilizes environmental analyses performed by a laboratory regulated under this section.

(18) "Regulatory purposes" means the use of laboratory analysis required by a regulatory governmental agency for determining compliance with this section or Chapter 1 (commencing with Section 116275), Chapter 2 (commencing with Section 116300), and Chapter 3 (commencing with Section 116350) of Part 11 of Division 104, Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.8 (commencing with Section 25300) of, Division 20, or Division 7 (commencing with

Section 13000) of the Water Code, or the regulations adopted under any of the provisions set forth in this paragraph.

SEC. 2. Section 100830 of the Health and Safety Code is amended to read:

100830. The department shall adopt regulations governing the administration and enforcement of this article. Regulations adopted by the department under this article shall specify conditions for recognizing on the basis of reciprocity the certification or NELAP accreditation of laboratories located outside of the State of California for activities regulated under this article by another state or by an agency of the United States government. Certification or NELAP accreditation by another jurisdiction may be recognized for purposes of this article with regard to one or several program activities, including, but not limited to, onsite inspections, the analysis of proficiency testing samples, or the evaluation of personnel qualifications.

SEC. 3. Section 100831 is added to the Health and Safety Code, to read:

100831. NELAP accreditation by another jurisdiction shall be recognized, for purposes of this article, for out-of-state laboratories with regard to one or several program activities, including, but not limited to, onsite assessments, the analysis of proficiency testing samples, or the evaluation of personnel qualifications.

SEC. 4. Section 100832 is added to the Health and Safety Code, to read:

100832. When the National Environmental Laboratory Accreditation Program standards are adopted by the National Environmental Laboratory Accreditation Conference, the department shall adopt or amend the regulations relating to environmental laboratories as necessary to enable California environmental laboratories to participate in the National Environmental Laboratory Accreditation Program.

SEC. 5. Section 100835 of the Health and Safety Code is amended to read:

100835. (a) The department may adopt regulations for the following:

(1) Quality assurance programs in effect at the laboratory.

(2) Laboratory facilities.

(3) Methods.

(4) Equipment.

(5) Proficiency testing.

(6) Fields of testing.

(7) Qualifications of laboratory directors and other laboratory personnel.

(8) Fees, inspections, hearings and other matters necessary to the administration and enforcement of this article.

(9) NELAP accreditation.

(10) Any other area concerning the operation or maintenance of a laboratory not inconsistent with this article as may be necessary to carry out this article.

(b) If any regulations governing the minimum standards for certification or NELAP accreditation, or both, of laboratories that perform analysis of food relate to the testing of raw agricultural commodities or dairy products, those regulations shall be adopted, in cooperation with the Department of Food and Agriculture.

SEC. 6. Section 100837 of the Health and Safety Code is amended to read:

100837. (a) The department shall adopt regulations governing the application criteria for acceptance and approval of ATPLAO's. Applicants may be any private or public entity, whether or not for profit, that demonstrates to the department's satisfaction compliance with the criteria set forth in the regulations adopted pursuant to this section at the time of application and thereafter as provided by the department. The regulations adopted pursuant to this section shall include:

(1) Minimum requirements for the applicant ATPLAO's, and objective criteria for department approval that assure accreditation assessments comparable to those conducted by the department pursuant to this article.

(2) Criteria for the minimum content of accreditation examination and laboratory performance level that are, to the extent feasible, comparable to department accreditation practices and procedures that apply to environmental laboratories pursuant to this article.

(3) Procedures for the notification of the department when an ATPLAO approved laboratory fails to meet performance criteria.

(4) Provisions for the department to periodically review performance and procedures of an ATPLAO, and enforcement procedures including revocation of approval. The department shall recover the costs of approving and sustaining the approval of an ATPLAO from the person or entity seeking that approval.

(5) Procedures for inspection and auditing of laboratories, including inspection and auditing by the department.

(6) Procedures for interim certification of laboratories.

(7) Fees that result in a lower fee structure than, but parallel to, that adopted in subdivision (a) of Section 100860. These regulations shall include a basic fee plus an additional fee for each field of testing that the laboratory performs and the fees shall be sufficient to support the program.

(b) The department may consult with ATPLAO's, laboratories, and other interested parties and consider any national or international guidance for accreditation programs in adopting regulations as set forth in this section.

(c) An ATPLAO shall not be prohibited from establishing and implementing, on its own initiative or at the request of a laboratory,

standards that exceed the minimum standards established by the department.

(d) The regulations adopted pursuant to this section shall be proposed on or before June 30, 2000. Recognition of ATPLAO's shall commence on or before December 31, 2000.

(e) Every ATPLAO that approves laboratories for NELAP accreditation shall comply with all NELAC standards.

SEC. 7. Section 100840 of the Health and Safety Code is amended to read:

100840. Any laboratory requesting certification or NELAP accreditation under this article shall file with the department a verified application on forms prescribed by the department containing all of the following:

(a) The names of the applicant and the laboratory.

(b) The location of the laboratory.

(c) A list of fields of testing for which the laboratory is seeking certification, selected from the activities listed in subdivision (a) of Section 100860 or 100862.

(d) Evidence satisfactory to the department that the applicant has the ability to comply with this article and the regulations adopted under this article.

(e) Any other information required by the department for administration or enforcement of this article or regulations adopted under this article.

SEC. 8. Section 100845 of the Health and Safety Code is amended to read:

100845. (a) Each certificate issued pursuant to this article for state certification shall be issued to the owner of the laboratory and shall expire 24 months from the date of issuance. Application for renewal shall be filed with the department within a time period specified by regulation. Failure to make timely application for renewal shall result in expiration of the certificate.

(b) A certificate shall be forfeited by operation of law prior to its expiration date when one of the following occurs:

(1) The owner sells or otherwise transfers the ownership of the laboratory, except that the certificate shall remain in force 90 calendar days, if the department receives written assurance and appropriate documentation within 30 calendar days after the change has occurred that one or more of the conditions in subdivision (c) are met. The department shall accept or reject the assurance in writing within 30 calendar days after it has been received.

(2) There is a change in the location of the laboratory (except a mobile laboratory) or structural alteration that may affect adversely the quality of analysis in the fields of testing for which the laboratory has been certified or is seeking certification, without written notification to the department within 30 calendar days.

(3) The certificate holder surrenders the certificate to the department.

(c) Upon change of ownership of a laboratory, the department may extend a certificate to the expiration date of the original certificate upon written assurance by the new owner that the operation of the laboratory will continue so as not to adversely affect the conditions regulated by this article.

(d) The department shall be notified in writing within 30 calendar days whenever there is a change of director or other person in charge of a laboratory certified under this article. The notification shall include documentation of the qualifications of the new director or other person in charge of the laboratory.

SEC. 9. Section 100847 is added to the Health and Safety Code, to read:

100847. (a) The period of accreditation for NELAP accredited laboratories shall be 12 months.

(b) The accrediting authority shall be notified in writing within 30 calendar days of the sale or other transfer of ownership of a NELAP accredited laboratory.

(c) The accrediting authority shall be notified in writing within 30 calendar days of the change in location of a NELAP accredited laboratory, other than a mobile laboratory.

(d) The accrediting authority shall be notified within 30 calendar days whenever there is a change of laboratory director, or other individual in charge of the laboratory.

(e) NELAP accredited laboratories must conspicuously display their most recent NELAP accreditation certificate or their accreditation fields of testing or both in a permanent place in their laboratory.

(f) NELAP accredited laboratories shall not use their NELAP accreditation document or their accreditation status to imply any endorsement by the accrediting authority.

SEC. 10. Section 100850 of the Health and Safety Code is amended to read:

100850. (a) (1) Upon the filing of an application for certification and after a finding by the department that there is full compliance with this article and regulations adopted under this article, the department shall issue to the owner a certificate in the fields of testing identified in Section 100860 or 100862.

(2) Evidence of compliance by a laboratory with this article and any regulations adopted thereunder shall be forwarded by the ATPLAO to the department for review and approval prior to issuance of a certificate by the department pursuant to this section. The department shall retain ultimate authority to decide whether a laboratory shall be certified or decertified. Whenever an approved laboratory that has been issued a certificate pursuant to this section no longer is approved by an ATPLAO, the certificate issued pursuant to this section shall be automatically revoked by the department, pursuant to appropriate administrative due process as may be prescribed by the department by regulation. However, the

laboratory may apply to the department for immediate recertification pursuant to this section. Immediate recertification may occur if the department determines that the loss of certification does not result in the laboratory's failure to be in compliance with this article and the regulations adopted thereunder.

(b) The department shall deny or revoke a certificate if it finds any of the following:

(1) The laboratory fails to report acceptable results in the analysis of proficiency testing samples.

(2) The laboratory fails to pass an onsite assessment.

(3) The laboratory is not in compliance with any other provision of this article or regulations adopted under this article.

(c) Provided that there is compliance with all other provisions of this article, a certificate may be restricted by the department to the fields of testing of Section 100860 or 100862 or subgroups thereof as defined by regulation for which acceptable results have been produced and the onsite assessment was passed.

(d) Upon the filing of a complete application for a certificate pursuant to subdivision (a), the department may issue an interim certificate pending the completion of onsite assessment and an analysis of proficiency testing samples. An interim certificate shall be nonrenewable and shall remain in effect until a certificate is either granted under subdivision (a) or denied under subdivision (b), but not later than one year after the date of issuance.

SEC. 11. Section 100851 is added to the Health and Safety Code, to read:

100851. (a) An application for NELAP accreditation or renewal of NELAP accreditation shall be denied by the accrediting authority for any of the following reasons:

(1) Failure to submit all information necessary to determine the laboratory's eligibility for its accreditation or continued compliance with this section or regulations adopted thereunder.

(2) Failure of the laboratory staff to meet NELAC standards for personnel requirements. These qualifications may include education, training, and experience requirements.

(3) Failure to successfully analyze and report proficiency testing samples.

(4) Failure to respond to a deficiency report from the onsite assessment with a corrective action report within 30 calendar days of the receipt of the report.

(5) Failure to implement the corrective actions detailed in the corrective action report within the specified amount of time.

(6) Misrepresentation of any material fact pertinent to receiving or maintaining NELAP accreditation.

(b) The NELAP approved accrediting authority may suspend the accreditation of a NELAP accredited laboratory, in whole or in part, for failure to correct the deficiencies, within a specified amount of time, as identified in the onsite assessment. The laboratory shall

retain those areas of accreditation where it continues to meet the requirements of the accrediting authority. A suspended NELAP accredited laboratory shall not be required to reapply for accreditation if the causes for suspension are corrected within six months.

(c) The NELAP approved accrediting authority shall suspend a NELAP accreditation in whole or in part for the following reasons:

(1) Failure to complete proficiency testing studies.

(2) Failure to maintain a history of at least two successful, out of the most recent three, proficiency testing studies for each affected accreditation field of testing, subgroup, or analyte for which the laboratory is accredited.

(3) Failure to successfully analyze and report proficiency testing sample results pursuant to Chapter 2 of the NELAC standards.

(4) Failure to submit an acceptable corrective action report in response to a deficiency report and failure to implement corrective action related to any deficiencies found during laboratory assessments within the required time period, as required by the NELAC standards.

(5) Failure to notify the accrediting authority of any changes in key accreditation criteria, as required by Chapter 4 of the NELAC standards.

(6) Failure to perform all accredited tests in accordance with NELAC standards.

(7) Failure to meet all of the requirements of Chapter 5 of the NELAC standards.

(d) A suspended laboratory shall not be required to reapply for any NELAP accreditation if the causes for suspension are corrected within six months. A suspended laboratory may not continue to analyze samples for the affected fields of testing for which it holds accreditation. A suspended laboratory shall remain suspended without a right to appeal if the suspension is caused by unacceptable proficiency testing sample results.

(e) If a laboratory is unable to correct the reason for suspension, the laboratory's accreditation shall be revoked in whole or in part.

(f) A laboratory's accreditation may not be suspended without the right to due process, as set forth in Chapter 4 of the NELAC standards.

SEC. 12. Section 100852 of the Health and Safety Code is amended to read:

100852. (a) Notwithstanding any other provision of law, the department may issue a certificate to the owner of a laboratory in a field of testing or method adopted by the federal Environmental Protection Agency pursuant to Part 136 of Title 40 of the Code of Federal Regulations, as amended September 11, 1992, as published in the Federal Register (57 FR 41830), or Part 141 of Title 40 of the Code of Federal Regulations, as amended July 17, 1992, as published

in the Federal Register (57 FR 31776), and as subsequently amended and published in the Federal Register.

(b) After the department has become a NELAP approved accreditating authority, performance based measurement system methods will be accepted, when mandated methods are indicated. A fee, as specified in regulations adopted by the department, may be charged for the review of each performance based measurement system method.

(c) Notwithstanding any other provision of law, the department shall not be required to meet the requirements of Chapter 3.5 (commencing with Section 11340) of the Government Code in order to issue a certificate pursuant to subdivision (a).

SEC. 13. Section 100855 of the Health and Safety Code is amended to read:

100855. (a) Upon the denial of any application for a certificate or the denial of approval as an ATPLAO, or the revocation of a certificate or the revocation of approval as an ATPLAO, the department shall immediately notify the applicant or organization by certified mail, return receipt requested, of the denial and the reasons for the denial. Within 20 calendar days of receipt, the applicant or organization may present the department with a written petition for a hearing. Upon receipt in proper form by the department, the petition shall be set for hearing. The proceedings shall be conducted in accordance with Section 100171 and the department has all the powers granted in that section.

(b) The proceedings under this section for denial, suspension, or revocation of NELAP accreditation shall also be conducted in accordance with Section 100171.

SEC. 14. Section 100860 of the Health and Safety Code is amended to read:

100860. (a) At the time of application and annually thereafter, from the date of the issuance of the certificate, a laboratory shall pay an annual certification fee. The fee shall consist of a basic nonrefundable fee of eight hundred seventy-nine dollars ($879) and an additional fee of three hundred ninety-six dollars ($396) for certification in each of the following fields of testing for which accreditation is sought: (1) microbiology of drinking water and wastewater; (2) inorganic chemistry and physical properties of drinking water excluding toxic chemical elements; (3) analysis of toxic chemical elements in drinking water; (4) organic chemistry of drinking water (measurement by gc/ms combination); (5) organic chemistry of drinking water (excluding measurements by gc/ms combination); (6) radiochemistry; (7) shellfish sanitation; (8) aquatic toxicity bioassays; (9) physical properties testing of hazardous waste; (10) inorganic chemistry and toxic chemical elements of hazardous waste; (11) extraction tests of hazardous waste; (12) organic chemistry of hazardous waste (measurement by gc/ms combination); (13) organic chemistry of hazardous waste

(excluding measurements by gc/ms combination); (14) bulk asbestos analysis; (15) substances regulated under the California Safe Drinking Water and Toxic Enforcement Act and not included in other listed groups; (16) wastewater inorganic chemistry, nutrients, and demand; (17) toxic chemical elements in wastewater; (18) organic chemistry of wastewater (measurements by gc/ms combination); (19) organic chemistry of wastewater (excluding measurements by gc/ms combination); (20) inorganic chemistry and toxic chemical elements of pesticide residues in food; (21) organic chemistry of pesticide residues in food (measurement by gc/ms combination); (22) organic chemistry of pesticide residues in food (excluding measurement by gc/ms combination); and (23) operation of a mobile laboratory in any one of the above fields of testing in addition to activity in the same field of testing in a certified stationary laboratory under the same owner.

Fees for certification in a specified field of testing may be refunded if the department nullifies the application due to failure by the laboratory to complete the application process in the time and manner prescribed by regulation.

(b) In addition to the payment of certification fees, laboratories located outside the State of California shall reimburse the department for travel and per diem necessary to perform onsite inspections.

(c) If reciprocity with another jurisdiction is established by regulation as described in Section 100830, the regulations may provide for the waiver of certification fees for program activities considered equivalent.

(d) Fees collected under this section shall be adjusted annually as specified in Section 100425. The adjustment shall be rounded to the nearest whole dollar. It is the intent of the Legislature that the programs operated under this article be fully fee-supported.

(e) State and local government-owned laboratories in California established under Section 101150 or performing work only in a reference capacity as a reference laboratory are exempt from the payment of the fee prescribed under subdivision (a).

(f) In addition to the payment of certification fees, laboratories certified or applying for certification in fields of testing (20), (21), or (22) under subdivision (a) shall pay the department a fee of four hundred dollars ($400) for the preparation and handling of each proficiency testing sample set.

(g) For the purpose of this section, a reference laboratory is a laboratory owned and operated by a governmental regulatory agency for the principal purpose of analyzing samples referred by other laboratories for confirmatory analysis. Reference laboratories carry out quality assurance functions for other laboratories and may carry out unusual, highly specialized, and difficult analyses not generally available through commercial laboratories, and a limited

number of routine analyses, for regulatory purposes only, and without assessing per-sample fees for the services.

(h) Notwithstanding subdivision (a), a laboratory that is applying for or has received certification pursuant to third-party laboratory accreditation as set forth in paragraph (2) of subdivision (a) of Section 100850 shall pay an initial fee at the time of application and an annual fee thereafter. The initial and annual fee shall be established by the department in the regulations authorized by paragraph (9) of subdivision (a) of Section 100837. The fees collected under these regulations shall be adjusted annually as specified in Section 100425. The adjustment shall be rounded to the nearest whole dollar. It is the intent of the Legislature that the programs operated under this article be fully fee-supported.

SEC. 15. Section 100862 is added to the Health and Safety Code, to read:

100862. (a) At the time of application for NELAP accreditation and annually thereafter, from the date of the issuance of the accreditation, a laboratory shall pay a base fee and a fee for each field of testing listed below for which a laboratory has requested NELAP accreditation. The fees shall be nonrefundable and set in regulations, and shall be sufficient to allow the NELAP program to be fully fee supported. The fields of testing for NELAP accreditation and their code numbers are all of the following:

(101) Microbiology of drinking water.
(102) Inorganic chemistry of drinking water.
(103) Toxic chemical elements of drinking water.
(104) Volatile organic chemistry of drinking water.
(105) Nonvolatile organic chemistry of drinking water.
(106) Radiochemistry of drinking water.
(107) Microbiology of wastewater.
(108) Inorganic chemistry of wastewater.
(109) Toxic chemical elements of wastewater.
(110) Volatile organic chemistry of wastewater.
(111) Nonvolatile organic chemistry of wastewater.
(112) Radiochemistry of wastewater.
(113) Whole effluent toxicity of wastewater.
(114) Inorganic chemistry and toxic chemical elements of hazardous waste.
(115) Extraction test of hazardous waste.
(116) Volatile organic chemistry of hazardous waste.
(117) Nonvolatile organic chemistry of hazardous waste.
(118) Radiochemistry of hazardous waste.
(119) Toxicity bioassay of hazardous waste.
(120) Physical properties of hazardous waste.
(121) Bulk asbestos analysis of hazardous waste.

(b) Fees for NELAP accreditation shall be adjusted annually as specified in Section 100425.

SEC. 16. Section 100863 is added to the Health and Safety Code, to read:

100863. The department shall appoint a multidisciplinary committee to assist, advise, and make recommendations regarding technical, scientific, and administrative matters concerning the accreditation or certification of environmental laboratories. Appointments to the committee shall be made from lists of nominees solicited by the department, and shall provide adequate representation of interested parties and environmental laboratories subject to this chapter. Subcommittees of the committee may be appointed consisting of committee members and other persons having particular knowledge of a subject area, for the purpose of assisting the department on special problems and making recommendations to the committee for consideration in the establishment of rules and regulations. The department shall determine the terms of office of appointees to the committee and any subcommittee. Members of the committee and of any subcommittee shall serve without compensation and shall pay their own expenses incurred as a result of attending meetings or engaging in any other activity pursuant to this section.

SEC. 17. Section 100865 of the Health and Safety Code is amended to read:

100865. (a) In order to carry out the purpose of this article, any duly authorized representative of the department may do the following:

(1) Enter and inspect a laboratory that is certified or NELAP accredited pursuant to this article or that has applied for certification or NELAP accreditation.

(2) Inspect and photograph any portion of the laboratory, equipment, any activity, or any samples taken, copy and photograph any records, reports, test results, or other information related solely to certification under this article or regulations adopted pursuant to this article.

(b) It shall be a misdemeanor for any person to prevent, interfere with, or attempt to impede in any way, any duly authorized representative of the department from undertaking the activities authorized by this section.

(c) If a laboratory that is seeking certification, NELAP accreditation, recertification, or NELAP reaccreditation refuses entry of a duly authorized representative during normal business hours for either an announced or unannounced onsite assessment, the certification, accreditation, recertification, or reaccreditation shall be denied or revoked.

(d) Refusal of a request by a NELAP approved accrediting authority, the department, or any employee, agent, or contractor of the department, for permission to inspect, pursuant to this section, the laboratory and its operations and pertinent records during the

hours the laboratory is in operation shall result in denial or revocation of certification or NELAP accreditation.

SEC. 18. Section 100870 of the Health and Safety Code is amended to read:

100870. (a) Any laboratory that is certified or holds NELAP accreditation or has applied for certification or NELAP accreditation or for renewal of certification or NELAP accreditation under this article, shall analyze proficiency testing samples provided directly or indirectly by the department. The department shall have the authority to contract with third parties for the provision of proficiency testing samples. The samples shall be tested by the laboratory according to methods specifically approved for this purpose by the United States government or the department, or alternate methods of demonstrated adequacy or equivalence, as determined by the department. Proficiency testing sample sets shall be provided not less than twice, nor more than four times, a year to each certified laboratory that performs analyses of food for pesticide residues.

(b) The department may provide directly or indirectly proficiency testing samples to a laboratory for the purpose of determining compliance with this article with or without identifying the department.

(1) When the department identifies itself, all of the following shall apply:

(A) The results of the testing shall be submitted to the department on forms provided by the department on or before the date specified by the department, and shall be used in determining the competency of the laboratory.

(B) There shall be no charge to the department for the analysis.

(2) When the department does not identify itself, the department shall pay the price requested by the laboratory for the analyses.

(c) If a certified or NELAP accredited laboratory submits proficiency testing sample results generated by another laboratory as its own, the certification or NELAP accreditation shall be immediately revoked.

(d) Laboratories shall obtain their proficiency testing samples from a list of NELAP, federal, or state-approved proficiency testing sample providers. Laboratories shall bear the cost of any proficiency testing study fee charged for participation. Each laboratory shall authorize the proficiency testing providers to report the study results directly to the accrediting authority and NELAP, as well as to the laboratory.

SEC. 19. Section 100872 is added to the Health and Safety Code, to read:

100872. (a) A NELAP accredited laboratory shall analyze proficiency testing samples not less than twice a year for those fields of testing approved in Section 100862. Proficiency testing procedures

shall be approved by the United States government or by the department.

(b) The laboratory must be successful in at least two out of the most recent three proficiency testing studies for each field of testing, subgroup, or analyte for which it is accredited.

(c) The NELAP accredited laboratory shall discontinue the analyses of samples for the fields of testing or subgroups which have been suspended for failure to comply with the proficiency testing requirements in this section.

SEC. 20. Section 100880 of the Health and Safety Code is amended to read:

100880. If the department determines that a laboratory is in violation of this article or any regulation or order issued or adopted pursuant to this article, the department may, in addition to suspension, denial, or revocation of the certificate or NELAP accreditation, issue a citation to the owner of the laboratory. It shall be the function of the approved accrediting authority to issue citations. The Legislature finds and declares that since NELAC is a standard setting body, it cannot, as such, enforce civil or criminal penalties.

(a) The citation shall be served personally or by registered mail.

(b) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, order, or regulation alleged to have been violated.

(c) The citation shall fix the earliest feasible time for elimination or correction of the condition constituting the violation.

(d) Citations issued pursuant to this section shall specify a civil penalty for each violation, not to exceed one thousand dollars ($1,000), for each day that the violation occurred.

(e) If the owner fails to correct a violation within the time specified in the citation, the department may assess a civil penalty as follows:

(1) For failure to comply with any citation issued for a violation of this article or a regulation, an amount not to exceed two hundred fifty dollars ($250) for each day that the violation continues beyond the date specified for correction in the citation.

(2) For failure to comply with any citation issued for violation of any department-issued order, an amount not to exceed two hundred dollars ($200) for each day the violation continues beyond the date specified for correction in the citation.

SEC. 21. Section 100885 of the Health and Safety Code is amended to read:

100885. (a) Any person who operates a laboratory that performs work that requires certification or NELAC accreditation under Section 25198, 25298.5, 25358.4, 110490, or 116390 of this code, or Section 13176 of the Water Code, who is not certified or NELAC

accredited to do so, may be enjoined from so doing by any court of competent jurisdiction upon suit by the department.

(b) (1) Any organization that represents itself as an ATPLAO without being granted approval pursuant to Section 100837 shall be in violation of this article and may be enjoined from making those representations by any court of competent jurisdiction at the suit of the department. Nothing in this section shall limit the department from exercising any other remedy for a violation of this article.

(2) Nothing in this article shall limit the activities of any ATPLAO within the state, whether or not approved pursuant to Section 100837, if the purpose is not to obtain state environmental testing laboratory certification or NELAP accreditation.

(c) When the department determines that any person has engaged in, or is engaged in, any act or practice that constitutes a violation of this article, or any regulation or order issued or adopted thereunder, the department may bring an action in the superior court for an order enjoining these practices or for an order directing compliance and affording any further relief that may be required to ensure compliance with this article.

SEC. 22. Section 100890 of the Health and Safety Code is amended to read:

100890. (a) Any person who knowingly makes any false statement or representation in any application, record, or other document submitted, maintained, or used for purposes of compliance with this article, may be liable, as determined by the court, for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation or, for continuing violations, for each day that violation continues.

(b) Any person who operates a laboratory for purposes specified pursuant to Section 25198, 25298.5, 25358.4, 110490, or 116390 of this code, or Section 13176 of the Water Code that requires certification, who is not certified by the department pursuant to this article, may be liable, as determined by the court, for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation or, for continuing violations, for each day that violation continues.

(c) A laboratory that advertises or holds itself out to the public or its clients as having been certified for any of the fields of testing referred to in Section 100860 or 100862 without having a valid and current certificate in each field of testing identified by the advertisement or other representation may be liable, as determined by the court, for a civil penalty not to exceed one thousand dollars ($1,000) or, for continuing violations, for each day that violation continues.

(d) Each civil penalty imposed for any separate violation pursuant to this section shall be separate and in addition to any other civil penalty imposed pursuant to this section or any other provision of law.

SEC. 23. Section 100895 of the Health and Safety Code is amended to read:

100895. (a) Any person who knowingly does any of the following acts may, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in the county jail not to exceed one year, or by both the fine and imprisonment:

(1) Makes any false statement or representation in any application, record, report, or other document submitted, maintained, or used for the purposes of compliance with this article.

(2) Has in his or her possession any record required to be maintained pursuant to this article that has been altered or concealed.

(3) Destroys, alters, or conceals any record required to be maintained pursuant to this article.

(4) Withholds information regarding an imminent and substantial danger to the public health or safety when the information has been requested by the department in writing and is required to carry out the department's responsibilities pursuant to this article.

(b) If the conviction under subdivision (a) is for a violation committed after a first conviction of the person under this section, the person may be punished by imprisonment in the state prison for up to 24 months, or in the county jail for not to exceed one year, or by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, or by both the fine and imprisonment.

(c) A NELAP accredited laboratory, upon suspension, revocation, or withdrawal of its NELAP accreditation, shall do both of the following:

(1) Discontinue use of all catalogs, advertising, business solicitations, proposals, quotations, or their materials that contain reference to their past accreditation status.

(2) Return its certificate of NELAP accreditation to the accrediting authority.

(d) The penalties cited in subdivisions (a) and (b) shall also apply to NELAP accredited laboratories.

SEC. 24. Section 100907 is added to the Health and Safety Code, to read:

100907. (a) The department shall revoke, in whole or in part, the accreditation of a NELAP accredited laboratory for either of the following reasons:

(1) Failure to submit an acceptable corrective action report in response to a deficiency report, and failure to implement corrective action related to any deficiencies found during a laboratory assessment. The laboratory may submit two corrective actions within the time limits specified by the accrediting authority.

(2) Failure to successfully analyze and report proficiency testing sample results pursuant to Chapter 2 of the NELAC standards.

(b) The department shall revoke, in whole, the accreditation of a NELAP accredited laboratory for any of the following reasons:

(1) Failure to respond with a corrective action report within the required 30-day period.

(2) Failure to participate in the proficiency testing program, as required by Chapter 2 of the NELAC standards.

(3) Submittal of proficiency test sample results generated by another laboratory as its own.

(4) Misrepresentation of any material fact pertinent to receiving or maintaining accreditation.

(5) Denial of entry during normal business hours for an onsite assessment, as required by Chapter 3 of the NELAC standards.

(6) Conviction of charges for the falsification of any report of, or that relates to, a laboratory analysis.

(c) The department may also revoke, in whole, a laboratory's accreditation for failure to remit the accreditation fees within the time limit established by the accrediting authority.

(d) After correcting the reason or reasons for revocation, the NELAP accredited laboratory may reapply for accreditation no sooner than six months from the official date of revocation.

(e) A laboratory's NELAP accreditation shall not be revoked without the right to due process, as required by Chapter 4 of the NELAC standards.

SEC. 25. Section 100910 of the Health and Safety Code is amended to read:

100910. Proceedings for the suspension or revocation of a certificate under this article shall be conducted in accordance with Section 100171, and the department shall have all powers granted pursuant to that section.

SEC. 26. Section 100915 of the Health and Safety Code is amended to read:

100915. The department may temporarily suspend certification or NELAP accreditation prior to any hearing, when it has determined that this action is necessary to protect the public. The department shall notify the owner of the temporary suspension and the effective date thereof and at the same time shall serve the owner with an accusation. Upon receipt of a notice of defense by the owner, the matter shall be set for hearing within 15 calendar days. The hearing shall be held as soon as possible but no later than 30 calendar days after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the department has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the department fails to make a final determination on the merits within 60 calendar days after the original hearing has been completed.

SEC. 27. 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.

CHAPTER 373

An act to amend Section 14036 of the Government Code, relating to transportation.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 14036 of the Government Code is amended to read:

14036. (a) The department shall prepare a 10-year State Rail Plan biennially for submission to the Legislature, the Governor, the Public Utilities Commission, and the California Transportation Commission. The plan shall be submitted to the California Transportation Commission on or before October 1, 1995, and on or before October 1 of each odd-numbered year thereafter, for its advice and consent, and to the Legislature, the Governor, and the Public Utilities Commission by the following March 1. The plan shall consist of a passenger rail element and a freight rail element.

(b) The passenger rail element shall contain all of the following:

(1) For capital and operating subsidies and costs, all actual encumbrances for the prior two fiscal years; and for state operations, all actual expenditures for the prior two fiscal years. All revenues shall be identified by source.

(2) For capital and operating subsidies, estimated encumbrances and revenues for the current year; and for state operations, estimated expenditures for the current year. The department shall use the same format as is required for prior year expenditures pursuant to subdivision (a).

(3) For the budget year and the nine following fiscal years, proposed encumbrances for capital and operating subsidies and costs shall be reported in the same format as is required for the prior year's expenditures. For state operations, proposed expenditures for the budget year shall be reported.

(4) The identification and cost of capital facilities necessary to enhance competitiveness of rail passenger services, including, for each intercity route, a list of at least the three highest priority capital improvement projects, with cost estimates and a funding plan.

(5) A performance evaluation of all services in operation for the two prior years, including performance trends, potential for efficiency and effectiveness, possible improvements, and strategies to achieve that potential. This shall include an evaluation of all feeder bus services, using, among other things, criteria based on ridership levels, break-even points, and levels of growth in service utilization. The number of daily feeder bus runs, if any, that failed to carry even one passenger shall be identified.

(6) A recommendation of a level of and program for services over a 10-year period, including a list of service enhancements on existing and additional routes, with funding and priority recommendations. This shall include identification of feeder bus service improvements and a management and operating plan for achieving these improvements.

(7) An evaluation of reports by regional planning agencies and county transportation commissions on commuter service alternatives in their regions, including presentation of their recommendations.

(8) A map showing all existing intercity and commuter passenger rail routes and services, all proposed intercity and commuter passenger rail routes and services, and all intercity and commuter passenger rail routes and services that are the subject of feasibility studies.

(9) A report on the expenditure of marketing activities funds for purchases of media advertising of rail passenger services.

This report shall be prepared in consultation with the Public Utilities Commission and the National Rail Passenger Corporation. The department may consult with other agencies, organizations, and persons with expertise. The department shall employ realistic assumptions, using Public Utilities Commission cost data whenever possible, with respect to the level of services it can provide and the cost of these services when developing the program.

(10) A discussion of the department's overall marketing strategy as it relates to the intercity rail passenger service, including feeder bus service, and a report on the expenditure of marketing activities funds for purchases of media advertising of rail passenger services.

(11) A discussion of fare policies and practices, including all of the following:

(A) The relationship of fare policies to ridership and yield, including the impact of (A) a variety of regular fares, including fares such as midweek and other off-peak discounts, (B) discount fare blackouts during certain holiday travel periods on yield and ridership, and (C) discount fares for small groups traveling together.

(B) Lightly travelled route segments where current fares are too high for the demand, and where ridership or yield, or both, would increase with lower fares.

(C) A potential fare policy that would maximize both ridership and yield.

(D) A summary of discussions with Amtrak on the subject of fares.

(c) The freight rail element shall contain all of the following:

(1) Environmental aspects, which shall include air quality, land use, and community impacts.

(2) Financing issues, which shall include a means to obtain federal and state funding.

(3) Rail issues, which shall include regional, intrastate, and interstate issues.

(4) Intermodal connections, which shall include seaports and intermodal terminals.

(5) Current system deficiencies.

(6) Service objectives, such as improving efficiency, accessibility, and safety.

(7) New technology, which shall include logistics and process improvement.

(8) Light density rail line analyses, which shall include traffic density, track characteristics, project selection criteria, and benefit-cost criteria.

CHAPTER 374

An act to add Section 35182.5 to the Education Code, relating to school district governing boards.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 35182.5 is added to the Education Code, to read:

35182.5. (a) The governing board of a school district may not do any of the following:

(1) Enter into a contract that grants exclusive advertising or grants the right to the exclusive sale of carbonated beverages throughout the district to a person, business, or corporation unless the governing board of the school district has adopted a policy after a public hearing of the governing board to ensure that the district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis pursuant to procedures contained in Section 20111 of the Public Contract Code or through the issuance of a Request for Proposal.

(2) Enter into a contract that prohibits a school district employee from disparaging the goods or services of the party contracting with the school board.

(3) Enter into a contract or permit a school within the district to enter into a contract for electronic products or services that requires the dissemination of advertising to pupils unless the governing board of the school district does all of the following:

(A) Enters into the contract at a noticed public hearing of the governing board.

(B) Makes a finding that the electronic product or service in question is or would be an integral component of the education of pupils.

(C) Makes a finding that the school district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to pupils.

(D) Provides written notice to the parents or guardians of pupils that the advertising will be used in the classroom or other learning centers. This notice shall be part of the district's normal ongoing communication to parents or guardians.

(E) Offers the parents the opportunity to request in writing that the pupil not be exposed to the program that contains the advertising. Any request shall be honored for the school year in which it is submitted, or longer if specified, but may be withdrawn by the parents or guardians at any time.

(b) The governing board of a school district may sell advertising, products, or services on a nonexclusive basis.

(c) The governing board of a school district may post public signs indicating the district's appreciation for the support of a person or business for the district's education program.

(d) Contracts entered into prior to the operative date of this section may remain in effect, but may not be renewed if they are in conflict with this section.

CHAPTER 375

An act to amend Section 4052 of the Business and Professions Code, relating to pharmacists.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by Section 4073.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including

physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written, patient-specific protocol approved by the treating or supervising physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(b) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility. Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (1) successfully completed clinical residency training or (2) demonstrated clinical experience in direct patient care delivery.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

CHAPTER 376

An act to amend Sections 3071 and 3072 of the Civil Code, relating to vehicles.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 3071 of the Civil Code is amended to read:

3071. (a) A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to this section for any vehicle with a value determined to be over four thousand dollars ($4,000). A filing fee shall be charged by the department and may be recovered by the lienholder if a lien sale is conducted or if the vehicle is redeemed. The application shall be executed under penalty of perjury and shall include all of the following information:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number also shall be included. If the vehicle identification number is not available, the department shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before accepting the application.

(2) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from the registration certificates within the vehicle, and the name and address of any person whom the lienholder knows, or reasonably should know, claims an interest in the vehicle.

(3) A statement of the amount of the lien and the facts that give rise to the lien.

(b) Upon receipt of an application made pursuant to subdivision (a), the department shall do all of the following:

(1) Notify the vehicle registry agency of a foreign state of the pending lien sale, if the vehicle bears indicia of registration in that state.

(2) By certified mail, send a notice, a copy of the application, and a return envelope preaddressed to the department to the registered and legal owners at their addresses of record with the department, and to any other person whose name and address is listed in the application.

(c) The notice required pursuant to subdivision (b) shall include all of the following statements and information:

(1) An application has been made with the department for authorization to conduct a lien sale.

(2) The person has a right to a hearing in court.

(3) If a hearing in court is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of the date that the notice required pursuant to subdivision (b) was mailed.

(4) If the Declaration of Opposition form is signed and returned to the department, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment, if he or she obtains a subsequent release from the declarant or if the declarant, cannot be served as described in subdivision (e).

(5) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the Declaration of Opposition form in the time specified, the department shall notify the lienholder within 16 days of the receipt of the form that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the department's notice under this subdivision. A lien sale of the vehicle shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).

(e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, or if the lienholder has attempted to effect service on the declarant in person with a marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server has been unable to effect service on the declarant, the lienholder may proceed with the judicial proceeding or proceed with the lien sale without a judicial proceeding. The lienholder shall notify the department of the inability to effect service on the declarant and shall provide the department with a copy of the documents with which service on the declarant was attempted. Upon receipt of the notification of unsuccessful service, the department shall send authorization of the sale to the lienholder and send notification of the authorization to the declarant.

(f) Upon receipt of authorization to conduct the lien sale from the department, the lienholder shall immediately do all of the following:

(1) At least five days, but not more than 20 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vehicle is located. If there is no newspaper published in the county, notice shall be given by posting a Notice of Sale form in three of the most public places in the town in which the vehicle is located and at the place where the vehicle is to be sold for 10 consecutive days prior to and including the day of the sale.

(2) Send a Notice of Pending Lien Sale form 20 days prior to the sale but not counting the day of sale, by certified mail with return receipt requested, to each of the following:

(A) The registered and legal owners of the vehicle, if registered in this state.

(B) All persons known to have an interest in the vehicle.

(C) The department.

(g) All notices required by this section, including the notice forms prescribed by the department, shall specify the make, year model, vehicle identification number, license number, and state of registration, if available, and the specific date, exact time, and place of sale. For motorcycles, the engine number shall also be included.

(h) Following the sale of a vehicle, the lienholder shall do both of the following:

(1) Remove and destroy the vehicle's license plates.

(2) Within five days of the sale, submit a completed "Notice of Release of Liability" form to the Department of Motor Vehicles.

(i) The Department of Motor Vehicles shall retain all submitted forms described in paragraph (2) of subdivision (h) for two years.

(j) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public for at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner.

(k) Within 10 days after the sale of any vehicle pursuant to this section, the legal or registered owner may redeem the vehicle upon the payment of the amount of the sale, all costs and expenses of the sale, together with interest on the sum at the rate of 12 percent per annum from the due date thereof or the date when that sum was advanced until the repayment. If the vehicle is not redeemed, all lien sale documents required by the department shall then be completed and delivered to the buyer.

(*l*) Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle shall be subject to Section 10652.5 of the Vehicle Code.

SEC. 2. Section 3072 of the Civil Code is amended to read:

3072. (a) For vehicles with a value determined to be four thousand dollars ($4,000) or less, the lienholder shall apply to the department for the names and addresses of the registered and legal owners of record. The request shall include a description of the vehicle, including make, year, model, identification number, license number, and state of registration. If the vehicle identification number is not available, the Department of Motor Vehicles shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before releasing the names and addresses of the registered and legal owners and interested parties.

(b) The lienholder shall, immediately upon receipt of the names and addresses, send, by certified mail with return receipt requested

or by United States Postal Service Certificate of Mailing, a completed Notice of Pending Lien Sale form, a blank Declaration of Opposition form, and a return envelope preaddressed to the department, to the registered owner and legal owner at their addresses of record with the department, and to any other person known to have an interest in the vehicle. The lienholder shall additionally send a copy of the completed Notice of Pending Lien Sale form to the department by certified mail on the same day that the other notices are mailed pursuant to this subdivision.

(c) All notices to persons having an interest in the vehicle shall be signed under penalty of perjury and shall include all of the following information and statements:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The specific date, exact time, and place of sale, which shall be set not less than 31 days, but not more than 41 days, from the date of mailing.

(3) The names and addresses of the registered and legal owners of the vehicle and any other person known to have an interest in the vehicle.

(4) All of the following statements:

(A) The amount of the lien and the facts concerning the claim which gives rise to the lien.

(B) The person has a right to a hearing in court.

(C) If a court hearing is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of the date the Notice of Pending Lien Sale form was mailed.

(D) If the Declaration of Opposition form is signed and returned, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant or if the declarant cannot be served as described in subdivision (e).

(E) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(F) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the completed Declaration of Opposition form within the time specified, the department shall notify the lienholder within 16 days that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the notice and judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after

becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).

(e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, or if the lienholder has attempted to effect service on the declarant in person with a marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server has been unable to effect service on the declarant, the lienholder may proceed with the judicial proceeding or proceed with the lien sale without a judicial proceeding. The lienholder shall notify the Department of Motor Vehicles of the inability to effect service on the declarant and shall provide the Department of Motor Vehicles with a copy of the documents with which service on the declarant was attempted. Upon receipt of the notification of unsuccessful service, the Department of Motor Vehicles shall send authorization of the sale to the lienholder and shall send notification of the authorization to the declarant.

(f) At least 10 consecutive days prior to and including the day of the sale, the lienholder shall post a Notice of Pending Lien Sale form in a conspicuous place on the premises of the business office of the lienholder and if the pending lien sale is scheduled to occur at a place other than the premises of the business office of the lienholder, at the site of the forthcoming sale. The Notice of Pending Lien Sale form shall state the specific date and exact time of the sale and description of the vehicle, including the make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included. The notice of sale shall remain posted until the sale is completed.

(g) Following the sale of a vehicle, the lienholder shall do both of the following:

(1) Remove and destroy the vehicle's license plates.

(2) Within five days of the sale, submit a completed "Notice of Release of Liability" form with the Department of Motor Vehicles.

(h) The Department of Motor Vehicles shall retain all submitted forms described in paragraph (2) of subdivision (g) for two years.

(i) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner. All lien sale documents required by the department shall be completed and delivered to the buyer immediately following the sale.

(j) Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle shall be subject to Section 10652.5 of the Vehicle Code.

CHAPTER 377

An act to add Section 33204.4 to the Public Resources Code, relating to parks and open space.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 33204.4 is added to the Public Resources Code, to read:

33204.4. (a) The Legislature finds and declares all of the following:

(1) The boundary of the Rim of the Valley Trail Corridor should be determined exclusively upon the best scientific and resource-based information regarding trail, recreational, and environmental resources in the area.

(2) Landowners, local government entities, members of the public, and other affected parties should be afforded maximum participation in the process by which the Rim of the Valley Trail Corridor is delineated.

(b) (1) Notwithstanding the requirements of Section 33015.5, if the conservancy determines, based on relevant scientific information and land use planning studies, and after holding at least one public hearing in the area that would be affected by a revision of the boundaries of the Rim of the Valley Trail Corridor, that a boundary revision in the vicinity of Placerita Canyon State Park east of State Route 14, including Whitney Canyon and its adjacent watersheds, is necessary, the executive director shall prepare and file with the Secretary of State, the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Wildlife, a revised map showing the changes in the boundaries of the Rim of the Valley Trail Corridor.

(2) A revised map prepared pursuant to paragraph (1) shall be supported by relevant scientific information and be in accordance with the purposes and objectives of Section 33204.3.

(c) Nothing in this section shall be interpreted to affect any portion of Elsmere Canyon. In addition, nothing in this section shall be interpreted to have any effect on the decisions whether or not to permit Elsmere Canyon as a solid waste facility, as identified in the

final Los Angeles County Countywide Siting Element, prepared and approved pursuant to Division 30 (commencing with Section 40000).

(d) Notwithstanding Section 33201, nothing in this section shall affect the jurisdiction of the State Coastal Conservancy.

CHAPTER 378

An act to add and repeal Article 6.5 (commencing with Section 217) of Chapter 1 of Division 1 of the Streets and Highways Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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 traditional means of contracting for the construction of highway improvements, construction of any portion of the project cannot be commenced until the Department of Transportation has developed complete plans and specifications for the project, placed the contract out for bid, and awarded the contract.

(b) Recent construction practices have shown that there is potential for faster performance and cost savings if commencement of construction is not dependent upon completion of plans and specification for the entire project, but only completion of plans and specifications for each construction phase. This form of contracting is commonly known as design-sequencing contracting.

(c) To test whether the design-sequencing form of contracting would be beneficial to California in the administration of its highway improvement program, the Director of Transportation should be authorized to implement a pilot program of no more than six highway improvement projects using design-sequencing design to permit concurrent construction activities.

SEC. 2. Article 6.5. (commencing with Section 217) is added to Chapter 1 of Division 1 of the Streets and Highways Code, to read:

Article 6.5. Design-Sequencing Demonstration and Evaluation Program

217. For purposes of this article, the following terms have the following meanings:

(a) "Design-sequencing" is a method of contracting that enables the sequencing of design activities to permit each construction phase

to commence when design for that phase is complete, instead of requiring design for the entire project to be completed before commencing construction.

(b) A "design-sequencing contract" is a contract between the department and a contractor that requires the department to prepare a design and permits construction of a project to commence upon completion of design for a construction phase.

(c) "Design" is a plan completed to a level of 30 percent.

217.2. (a) Notwithstanding Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, except Section 10128 of that code, and Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may conduct a pilot program to let design-sequencing contracts for the design and construction of no more than six transportation projects, to be selected by the director. For the purpose of this article, these projects shall be deemed public works.

(b) In selecting projects for the pilot program authorized under subdivision (a), the director shall attempt to balance geographical areas among test projects as well as pursue diversity in the types of projects undertaken.

(c) To the extent available, the department shall seek to incorporate existing knowledge and experience on design-sequencing contracts in carrying out its responsibilities under subdivision (a).

217.4. Not later than July 1 of each year for which the design-sequencing contracts are underway, the department shall prepare a status report on its contracting methods, procedures, costs, and delivery schedules. Upon completion of all design-sequencing contracts, notwithstanding Section 7550.5 of the Government Code, the department shall establish a peer review committee to prepare a report for submittal to the Legislature that describes and evaluates the outcome of the contracts provided for in this article, stating the positive and negative aspects of using design-sequencing as a contracting method.

217.6. Design-sequencing contracts shall be awarded in accordance with all of the following:

(a) The department shall advertise design-sequencing projects by special public notice to contractors.

(b) Contractors shall be required to provide prequalification information establishing appropriate licensure and successful past experience with the proposed work.

217.8. This article shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends the date 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 assist in alleviating, as soon as possible, the loss of productivity caused by the continuing traffic gridlock and delay on the state's system of highways, it is necessary that this act take effect immediately.

CHAPTER 379

An act to add Section 67302 to the Education Code, relating to instructional materials.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 67302 is added to the Education Code, to read:

67302. (a) An individual, firm, partnership or corporation that publishes or manufactures printed instructional materials for students attending the University of California, the California State University, or a California Community College, shall provide to the university, college, or particular campus of the university or college, for use by students attending the University of California, the California State University, or a California Community College, any printed instructional material in an electronic format mutually agreed upon by the publisher or manufacturer and the college or campus. Computer files or electronic versions of printed instructional materials shall maintain the structural integrity of the printed instructional material, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary. The computer files or electronic versions of the printed instructional material shall be provided to the university, college, or particular campus of the university or college at no additional cost and in a timely manner, upon receipt of a written request that does all of the following:

(1) Certifies that the university, college, or particular campus of the university or college has purchased the printed instructional material for use by a student with a disability or that a student with a disability attending or registered to attend that university, college, or particular campus of the university or college has purchased the printed instructional material.

(2) Certifies that the student has a disability that prevents him or her from using standard instructional materials.

(3) Certifies that the printed instructional material is for use by the student in connection with a course in which he or she is

registered or enrolled at the university, college, or particular campus of the university or college.

(4) Is signed by the coordinator of services for students with disabilities at the university, college, or particular campus of the university or college or by the campus or college official responsible for monitoring compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the university, college, or particular campus of the university or college.

(b) An individual, firm, partnership or corporation specified in subdivision (a) may also require that, in addition to the conditions enumerated above, the request shall include a statement signed by the student agreeing to both of the following:

(1) He or she will use the electronic copy of the printed instructional material in specialized format solely for his or her own educational purposes.

(2) He or she will not copy or duplicate the printed instructional material for use by others.

(c) If a college or university permits a student to directly use the electronic version of an instructional material, the disk or file shall be copy-protected or the college or university shall take other reasonable precautions to ensure that students do not copy or distribute electronic versions of instructional materials in violation of the Copyright Revisions Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(d) An individual, firm, partnership or corporation that publishes or manufactures nonprinted instructional materials for students attending the University of California, the California State University, or a California Community College shall provide computer files or other electronic versions of the nonprinted instructional materials for use by students attending the University of California, the California State University, or a California Community College, subject to the same conditions set forth in subdivisions (a) and (b) for printed instructional materials, when technology is available to convert these nonprinted instructional materials to a format that maintains the structural integrity of the nonprinted instructional materials that is compatible with braille translation and speech synthesis software.

(e) For purposes of this section:

(1) "Instructional material or materials" means textbooks and other materials written and published primarily for use by students in postsecondary instruction that are required or essential to a student's success in a course of study in which a student with a disability is enrolled. The determination of which materials are "required or essential to student success" shall be made by the instructor of the course in consultation with the official making the request pursuant to paragraph (4) of subdivision (a) in accordance with guidelines issued pursuant to subdivision (i). "Instructional material or materials" does not include nontextual mathematics and

science materials until the time software becomes commercially available that permits the conversion of existing electronic files of the materials into a format that is compatible with braille translation software or alternative media for students with disabilities.

(2) "Printed instructional material or materials" means instructional material or materials in book or other printed form.

(3) "Nonprinted instructional materials" means instructional materials in formats other than print, and includes instructional materials that require the availability of electronic equipment in order to be used as a learning resource, including, but not necessarily limited to, software programs, video disks, and video and audio tapes.

(4) "Structural integrity" means all of the printed instructional material, including, but not limited to, the text of the material, sidebars, the table of contents, chapter headings and subheadings, footnotes, indexes, glossaries, and bibliographies. "Structural integrity" need not include nontextual elements such as pictures, illustrations, graphs, or charts. If good faith efforts fail to produce an agreement pursuant to subdivision (a) between the publisher or manufacturer and the university, college, or particular campus of the university or college, as to an electronic format that will preserve the structural integrity of the printed instructional material, the publisher or manufacturer shall provide the instructional material in ASCII text and shall preserve as much of the structural integrity of the printed instructional material as possible.

(5) "Specialized format" means braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities.

(f) Nothing in this section shall be construed to prohibit a university, college, or particular campus of the university or college from assisting a student with a disability by using the electronic version of printed instructional material provided pursuant to this section solely to transcribe or arrange for the transcription of the printed instructional material into braille. In the event a transcription is made, the campus or college shall have the right to share the braille copy of the printed instructional material with other students with disabilities.

(g) The Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California may each establish one or more centers within their respective segments to process requests for electronic versions of instructional materials pursuant to this section. If a segment establishes a center or centers, each of the following shall apply:

(1) The colleges or campuses designated as within the jurisdiction of a center shall submit requests for instructional material made pursuant to paragraph (4) of subdivision (a) to the center, which shall transmit the request to the publisher or manufacturer.

(2) If there is more than one center, each center shall make every effort to coordinate requests within its segment.

(3) The publisher or manufacturer of instructional material shall be required to honor and respond to only those requests submitted through a designated center.

(4) If a publisher or manufacturer has responded to a request for instructional materials by a center, or on behalf of all the centers within a segment, all subsequent requests for these instructional materials shall be satisfied by the center to which the request is made.

(h) Nothing in this section shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright under the Copyright Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(i) The governing boards of the California Community Colleges, the California State University, and the University of California shall each adopt guidelines consistent with this section for its implementation and administration. At a minimum, the guidelines shall address all of the following:

(1) The designation of materials deemed "required or essential to student success."

(2) The determination of the availability of technology for the conversion of nonprinted materials pursuant to subdivision (d) and the conversion of mathematics and science materials pursuant to paragraph (4) of subdivision (e).

(3) The procedures and standards relating to distribution of files and materials pursuant to subdivisions (a) and (b).

(4) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(j) Failure to comply with the requirements of this section shall be a violation of Section 54.1 of the Civil Code.

CHAPTER 380

An act to amend Section 13132.7 of the Health and Safety Code, relating to fire safety.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 13132.7 of the Health and Safety Code is amended to read:

13132.7. (a) Within a very high fire hazard severity zone designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code and within a very high hazard severity zone designated by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division

1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(b) In all other areas, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class C as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(c) Notwithstanding subdivision (b), within state responsibility areas classified by the State Board of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except for those state responsibility areas designated as moderate fire hazard responsibility zones, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(d) (1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard severity zones designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class A as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(2) Paragraph (1) does not apply to any jurisdiction containing a very high fire hazard severity zone if the jurisdiction fulfills both of the following requirements:

(A) Adopts the model ordinance approved by the State Fire Marshal pursuant to Section 51189 of the Government Code or an ordinance that substantially conforms to the model ordinance of the State Fire Marshal.

(B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

(e) The State Building Standards Commission shall incorporate the requirements set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to the California Building Standards Code in accordance with Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13.

(f) Nothing in this section shall limit the authority of a city, county, city and county, or fire protection district in establishing more restrictive requirements, in accordance with current law, than those specified in this section.

(g) This section shall not affect the validity of an ordinance, adopted prior to the effective date for the relevant roofing standard specified in subdivisions (a) and (b), by a city, county, city and county, or fire protection district, unless the ordinance mandates a standard that is less stringent than the standards set forth in subdivision (a), in which case the ordinance shall not be valid on or after the effective date for the relevant roofing standard specified in subdivisions (a) and (b).

(h) Any qualified historical building or structure as defined in Section 18955 may, on a case-by-case basis, utilize alternative roof constructions as provided by the State Historical Building Code.

(i) The installer of the roof covering shall provide certification of the roof covering classification, as provided by the manufacturer or supplier, to the building owner and, when requested, to the agency responsible for enforcement of this part. The installer shall also install the roof covering in accordance with the manufacturer's listing.

(j) (1) No wood roofing materials shall be sold in this state unless:

(A) On and after January 1, 1997, the materials have passed at least one year of the 10-year natural weathering test.

(B) On and after January 1, 1998, the materials have passed at least two years of the 10-year natural weathering test.

(C) On and after January 1, 1999, the materials have passed at least three years of the 10-year natural weathering test.

(D) On and after January 1, 2000, the materials have passed at least four years of the 10-year natural weathering test.

(E) On and after January 1, 2001, the materials have passed at least five years of the 10-year natural weathering test.

(2) The 10-year natural weathering test required by this subdivision shall be conducted in accordance with standard 15-2 of the 1994 edition of the Uniform Building Code at a testing facility recognized by the State Fire Marshal.

(k) The Insurance Commissioner shall accept the use of fire retardant wood roofing material that meets the requirements of this section, used in the partial repair or replacement of nonfire retardant wood roofing material, as meeting the requirement in Section 2695.9 of Title 10 of the California Code of Regulations relative to matching replacement items in quality, color, and size.

———

CHAPTER 381

An act to add Sections 44225.6 and 44225.7 to the Education Code, relating to teacher credentialing.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) The most important education variable in pupil achievement is a fully prepared classroom teacher.

(2) Research clearly demonstrates that low-achieving pupils perform at levels equal to their peers when they are placed in classrooms with teachers who have completed state-approved preparation programs.

(b) The Legislature intends to do all of the following:

(1) Build upon systematic efforts over the past several years to strengthen teacher recruitment and retention, to the end that every pupil in a California public school classroom is taught by a fully prepared teacher.

(2) Maintain and expand, through the annual Budget Act process and as appropriate, existing state programs designed to expand the pool of prospective teachers, strengthen the pipeline into teaching, and remove unnecessary barriers to teaching careers. Those existing programs include the Paraprofessional Teacher Training Program, the Alternative Certification Program, the California Center for Teaching Careers, the Assumption Program of Loans for Educators, the Cal T Grant Program for teacher candidates, and the California Mathematics Initiative.

(3) Continue to expand the capacity of public institutions of higher education to enroll additional teacher candidates in approved teacher preparation programs, until these efforts result in enough fully prepared teachers to meet the needs of all California schools and classrooms.

SEC. 2. Section 44225.6 is added to the Education Code, to read:

44225.6. (a) By January 10 of each year, the commission shall report to the Legislature and the Governor on the number of classroom teachers who received credentials, internships, and emergency permits in the previous fiscal year. This report shall include the following information:

(1) The number of individuals recommended for credentials by institutions of higher education.

(2) The number of individuals recommended by school districts operating district internship programs.

(3) The number of individuals receiving an initial credential based on a program completed outside of California.

(4) The number of individuals serving in the following capacities by subject matter, county, and school district:

(A) University internship.

(B) District internship.

(C) Pre-Internship.

(D) Emergency permit.

(E) Credential waiver.

(5) The specific subjects and teaching areas in which there are a sufficient number of new holders of credentials to fill the positions currently held by individuals with emergency permits.

(b) The commission shall make this report available to school districts and county offices of education to assist them in the recruitment of credentialed teachers.

(c) A common measure of whether teacher preparation programs are meeting the challenge of preparing increasing numbers of new teachers is the number of teaching credentials awarded. The number of teaching credentials recommended by these programs and awarded by the commission are indicators of the productivity of teacher preparation programs. The commission shall include in the report prepared for the Legislature and Governor pursuant to subdivision (a) the total number of teacher credentials recommended by all accredited teacher preparation programs authorized by the commission and the number recommended by each of the following:

(1) The University of California system.

(2) The California State University system.

(3) Independent colleges and universities that offer teacher preparation programs approved by the commission.

(4) Other institutions that offer teacher preparation programs approved by the commission.

SEC. 3. Section 44225.7 is added to the Education Code, to read:

44225.7. (a) The commission may approve a school district request for the assignment of an individual pursuant to subdivision (m) of Section 44225 or Section 44300 if the district has certified by an annual resolution of the governing board that it has made reasonable efforts to recruit a fully prepared teacher for the assignment. If a suitable fully prepared teacher is not available to the school district, the district shall make reasonable efforts to recruit an individual for the assignment, in the following order:

(1) A candidate who is scheduled to complete initial preparation requirements within six months.

(2) A candidate who is qualified to participate in an approved internship program in the region of the school district.

(b) If a suitable individual who meets the priorities listed in subdivision (a) is not available to the school district, the district may, as a last resort, request approval for the assignment of a person who does not meet that criteria.

(c) As the supply of teaching interns increases as a result of legislative efforts to expand the Alternative Certification Program, the commission shall notify school districts that state policy directs the assignment of interns to classrooms when available in a given region, with decreased reliance on persons serving on emergency permits or credential waivers.

(d) As the supply of fully prepared teachers increases as a result of the Legislature's efforts to recruit and retain qualified teachers for California classrooms, the commission shall notify school districts that state policy directs the assignment of fully prepared teachers to California classrooms, with the use of permits or waivers only when school districts are geographically isolated from teacher preparation programs or in the case of unanticipated, short-term need for the assignment of personnel.

(e) As used in this section, a "fully prepared teacher" means an individual who has completed a teacher preparation program. For purposes of this subdivision, a "teacher preparation program" means either a set of courses, including supervised field experience, or an equivalent alternative program, that provides a curriculum of systematic preparation for serving as an educator in California public schools.

CHAPTER 382

An act to amend Sections 1048.1 and 1050 of the Penal Code, relating to career criminal prosecutions.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 1048.1 of the Penal Code is amended to read:

1048.1. In scheduling a trial date at an arraignment in superior court involving murder, as defined in subdivision (a) of Section 187, an alleged sexual assault offense, as described in subdivisions (a) and (b) of Section 11165.1, or an alleged child abuse offense, as described in Section 11165.6, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, reasonable efforts shall be made to avoid setting that trial, when that case is assigned to a particular prosecuting attorney, on the same day that another case is set for trial involving the same prosecuting attorney.

SEC. 2. 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, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, 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 subdivision shall be limited to a maximum of 10 additional court days. Only one continuance per case may be granted to the people under this subdivision for cases handled under the Career Criminal Prosecution Program and that continuance shall be for the shortest time possible, not to exceed 10 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. 3. 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) (1) 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.

(2) 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 stalking, as defined in Section 646.9, 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, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, 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.

(3) Only one continuance per case may be granted to the people under this subdivision for cases involving stalking or those handled under the Career Criminal Prosecution Program. Any continuance granted to the people in a case involving stalking or handled under

the Career Prosecution Program shall be for the shortest time possible, not to exceed 10 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. 4. Section 3 of this bill incorporates amendments to Section 1050 of the Penal Code proposed by both this bill and SB 69. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 1050 of the Penal Code, and (3) this bill is enacted after SB 69, in which case Section 2 of this bill shall not become operative.

CHAPTER 383

An act to add Section 1380 to the Evidence Code, relating to evidence.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 1380 is added to the Evidence Code, to read:

1380. (a) In a criminal proceeding charging a violation, or attempted violation, of Section 368 of the Penal Code, evidence of a statement made by a declarant is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness, as defined in

subdivisions (a) and (b) of Section 240, and all of the following are true:

(1) The party offering the statement has made a showing of particularized guarantees of trustworthiness regarding the statement, the statement was made under circumstances which indicate its trustworthiness, and the statement was not the result of promise, inducement, threat, or coercion. In making its determination, the court may consider only the circumstances that surround the making of the statement and that render the declarant particularly worthy of belief.

(2) There is no evidence that the unavailability of the declarant was caused by, aided by, solicited by, or procured on behalf of, the party who is offering the statement.

(3) The entire statement has been memorialized in a videotape recording made by a law enforcement official, prior to the death or disabling of the declarant.

(4) The statement was made by the victim of the alleged violation.

(5) The statement is supported by corroborative evidence.

(6) The victim of the alleged violation is an individual who meets both of the following requirements:

(A) Was 65 years of age or older or was a dependent adult when the alleged violation or attempted violation occurred.

(B) At the time of any criminal proceeding, including, but not limited to, a preliminary hearing or trial, regarding the alleged violation or attempted violation, is either deceased or suffers from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

(b) If the prosecution intends to offer a statement pursuant to this section, the prosecution shall serve a written notice upon the defendant at least 10 days prior to the hearing or trial at which the prosecution intends to offer the statement, unless the prosecution shows good cause for the failure to provide that notice. In the event that good cause is shown, the defendant shall be entitled to a reasonable continuance of the hearing or trial.

(c) If the statement is offered during trial, the court's determination as to the availability of the victim as a witness shall be made out of the presence of the jury. If the defendant elects to testify at the hearing on a motion brought pursuant to this section, the court shall exclude from the examination every person except the clerk, the court reporter, the bailiff, the prosecutor, the investigating officer, the defendant and his or her counsel, an investigator for the defendant, and the officer having custody of the defendant. Notwithstanding any other provision of law, the defendant's testimony at the hearing shall not be admissible in any other proceeding except the hearing brought on the motion pursuant to this section. If a transcript is made of the defendant's testimony, it

shall be sealed and transmitted to the clerk of the court in which the action is pending.

CHAPTER 384

An act to add Section 2889.4 to the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 2889.4 is added to the Public Utilities Code, to read:

2889.4. (a) A local exchange service provider that offers and charges for pay per use features that do not require an access code to be dialed to activate the service shall provide a new residential subscriber, including an existing residential customer ordering an additional line, during the verbal service order process, with information about those features. The representatives of a provider shall offer that subscriber blocking options for those features.

(b) (1) A local exchange service provider that offers the features described in subdivision (a) shall advise an existing residential subscriber who inquires about the features, or who seeks a bill adjustment for the inadvertent or unauthorized use of those per use custom calling features, that the features can be blocked and shall inquire as to whether the subscriber would like to block any or all of the features.

(2) (A) A local exchange service provider that offers the features described in subdivision (a) shall provide notice to all existing residential subscribers not later than May 1, 2000, describing all features provided on a per use basis, the charge for each activation, any additional usage or other charges, and detailed information about the ability to block these features.

(B) The notice shall contain a toll-free number for further information and shall contain a noticeable postcard size bill insert that may be returned in the subscriber's bill envelope if they wish to block any or all of the per use features described in subdivision (a).

(c) A local exchange service subscriber that has not blocked per use features in accordance with this section is entitled to a one-time bill adjustment which shall equal the sum of the charges for every incident that occurred during the first billing cycle pursuant to which the subscriber notifies the local exchange service provider that inadvertent or unauthorized activation occurred with regard to those per use services that do not require coded dialing to activate. The one-time bill adjustment shall include an adjustment for any

additional usage charges occurring as a result of inadvertent or unauthorized activation. The adjustment shall take the form of a credit to the subscriber's account if the existing technology or facilities of the local exchange service provider measure usage and permit a usage credit to be determined and provided.

(d) Nothing in this section prohibits a local exchange service provider from providing additional bill adjustments at its discretion in connection with charges imposed for features described in subdivision (a).

CHAPTER 385

An act to amend Section 14157 of, and to add and repeal Section 14160 of, the Financial Code, relating to credit unions.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 14157 of the Financial Code is amended to read:

14157. (a) A credit union organized and duly qualified as a credit union in another state of the United States shall become a credit union organized and operating pursuant to this division if in compliance with each of the following requirements:

(1) The credit union has filed a statement with the Secretary of State pursuant to Section 2105 of the Corporations Code.

(2) The commissioner has approved an application filed by the credit union that has not been suspended or revoked.

(3) The interest rate of the credit union on loans made to members residing in this state does not exceed the maximum interest rate permitted by the jurisdiction under whose laws it is organized.

(4) The credit union has obtained bond or insurance coverage as prescribed in Section 14409.

(5) The credit union has obtained insurance or guaranty for its members' share accounts as prescribed in Section 14858.

(6) The credit union submits an annual audit report to the commissioner as prescribed in Article 2 (commencing with Section 14250) of Chapter 3.

(7) The credit union pays the cost of examination or services performed in accordance with Section 14353.5.

(8) The credit union pays to the commissioner an annual fee of two hundred fifty dollars ($250). The credit union is not subject to Section 14350, 14351, or 14352.

(b) For the purpose of implementing the provisions of this section, the commissioner may cooperate with the administrators of the

credit union laws of other states and the commissioner may share with them information received in the administration of this division.

(c) The commissioner may disapprove an application filed pursuant to this section, or upon reasonable notice and opportunity for hearing suspend or revoke approval of an application, if the commissioner finds that the standards of organization, operation and regulation of the credit union, including, but not limited to, the laws and regulations of the jurisdiction in which it is organized, do not reasonably conform to the standards of organization, operation and regulation established pursuant to this division, or that 50 percent or more of the members of the credit union are, or are reasonably expected to be, residents of this state.

(d) Nothing in this section shall prohibit a credit union doing business in this state pursuant to this division from expanding or doing business in other states, countries, or foreign jurisdictions.

SEC. 2. Section 14160 is added to the Financial Code, to read:

14160. (a) It is the intent of the Legislature to enact legislation that would do all of the following:

(1) Permit credit unions organized under the laws of a foreign country to conduct the business of a credit union in this state if authorized by the commissioner.

(2) Provide for the regulation and supervision by the commissioner of foreign credit unions doing business in this state.

(3) Protect the interests of persons living and working in this state who may become members, borrowers, or creditors of foreign credit unions.

(4) Provide for foreign credit unions to transact business in this state in a safe and sound manner.

(5) Provide for foreign credit unions to transact business in this state in accordance with the laws of this state that are applicable to California state-licensed credit unions, as may be necessary or appropriate.

(b) The commissioner shall prepare recommendations for a comprehensive statutory framework to implement the legislative intent of subdivision (a), and shall submit the recommendations to the appropriate policy committees in each house of the Legislature on or before January 30, 2000.

(c) 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.

CHAPTER 386

An act to add Section 4460 to the Government Code, relating to accessibility standards.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 4460 is added to the Government Code, to read:

4460. (a) The Legislature finds and declares that it is essential that detectable warning and directional surfaces comply with the California Building Standards Code in order to ensure that those products are adequate to meet the safety and accessibility needs of the blind and visually impaired.

(b) All detectable warning products and directional surfaces installed after January 1, 2001, shall be evaluated by an independent entity, selected by the Department of General Services, Division of the State Architect, in consultation with the Department of Housing and Community Development when the products and surfaces may be mandated for use in residential housing, that shall issue and register a two-year product approval, renewable upon reevaluation at two-year intervals thereafter. The approval shall include conformation with architectural standards published in the California Building Standards Code as well as durability criteria appropriate for the type of installation, established by the Department of General Services, Division of the State Architect, in consultation with the Department of Housing and Community Development when the products and surfaces may be mandated for use in residential housing. The codes developed by the Department of General Services pursuant to this section shall ensure that shape, color fastness, confirmation, sound-on-cane acoustic quality, resilience, and attachment will not degrade significantly for at least five years. The Department of General Services, Division of the State Architect, shall impose fees to recover administrative and code development costs, as necessary, to develop standards and administer the registration and approval program. The fees shall be paid by manufacturers of detectable warning products and directional surfaces. All fees shall be deposited in the Access for Handicap Account created pursuant to Section 4454 and may be expended for costs incurred by the Department of General Services, Division of the State Architect, in performance of the requirements of this section.

As used in this section, "significant degradation" means that the product maintains at least 90 percent of its approved design characteristics. The Department of General Services may provide exceptions to this section for justifiable cause pursuant to Section 4451.

(c) The independent entity selected by the Department of General Services, Division of the State Architect, shall be recognized as having appropriate expertise in determining whether products

governed by this section comply with the California Building Standards Code.

CHAPTER 387

An act to amend Sections 194.2, 194.4, 194.5, and 195.1 of, and to repeal Section 194.6 of, the Revenue and Taxation Code, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 194.2 of the Revenue and Taxation Code is amended to read:

194.2. On or before January 15 or May 15, whichever date is sooner, the tax collector of an eligible county shall certify to the Director of Finance the total amount of the most recent installment of property taxes for all eligible property on both the regular secured roll that were deferred pursuant to Section 194.1 or pursuant to an ordinance adopted by the eligible county pursuant to Section 195.1.

SEC. 2. Section 194.4 of the Revenue and Taxation Code is amended to read:

194.4. After the tax collector of an eligible county has certified an amount to the Director of Finance pursuant to Section 194.2 or Section 194.3, the director shall, within 30 days and after verification, certify this amount to the Controller for allocation to the county. Upon receipt of certification by the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days thereafter.

SEC. 3. Section 194.5 of the Revenue and Taxation Code is amended to read:

194.5. On or before the December 31 or April 30 next following an eligible county's receipt of an allocation pursuant to Section 194.4, whichever date is sooner, the eligible county shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount of that allocation.

SEC. 4. Section 194.6 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 195.1 of the Revenue and Taxation Code is amended to read:

195.1. Any eligible county may adopt an ordinance providing for the temporary postponement of the second consecutive installment of taxes on property on the regular secured roll until the next property tax installment payment date, and, notwithstanding any

other provision of this chapter, also for the further postponement of the preceding installment of taxes on property on the regular secured roll which was deferred pursuant to Section 194.1, until that date. The state shall provide no reimbursement payments to local jurisdictions for the postponement of property taxes pursuant to this section, unless the Governor specifies otherwise in the proclamation of the emergency with respect to which the postponement was implemented.

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 provide as soon as possible that measure of fiscal relief that will help to alleviate the fiscal impact upon local governments of recent natural disasters, it is necessary that this act take effect immediately.

CHAPTER 388

An act to add Section 778.3 to the Insurance Code, relating to insurance.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 778.3 is added to the Insurance Code, to read:

778.3. The amount of the periodic finance charges, if any, imposed for the premium financing purchased and the annual percentage rate associated with those charges shall be disclosed in the policy itself, or if arranged pursuant to a separate premium financing agreement in the premium financing agreement itself, and in the premium finance billings. If the finance charge is a fixed fee, regardless of the amount of the loan or the balance due, the disclosure is not required to include the annual percentage rate associated with those charges. This section shall not apply to any insurance policy or premium finance billing if the same information is otherwise disclosed to the insured as required by any other provision of state or federal law.

CHAPTER 389

An act to amend Section 35160.5 of the Education Code, relating to school finance.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 35160.5 of the Education Code is amended to read:

35160.5. (a) The governing board of each school district that maintains one or more schools containing any of grades 7 to 12, inclusive, shall, as a condition for the receipt of an inflation adjustment pursuant to Section 42238.1, establish a school district policy regarding participation in extracurricular and cocurricular activities by pupils in grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular activities, shall ensure that pupil participation is conditioned upon satisfactory educational progress in the previous grading period. Pupils who are eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 are covered by this section consistent with that subdivision. No person shall classify a pupil as eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 for the purpose of circumventing the intent of this subdivision.

(1) For purposes of this subdivision, "extracurricular activity" means a program that has all of the following characteristics:

(A) The program is supervised or financed by the school district.

(B) Pupils participating in the program represent the school district.

(C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program.

(D) The program includes both preparation for performance and performance before an audience or spectators.

(2) For purposes of this subdivision, an "extracurricular activity" is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time.

(3) For purposes of this subdivision, a "cocurricular activity" is defined as a program that may be associated with the curriculum in a regular classroom.

(4) Any teacher graded or required program or activity for a course that satisfies the entrance requirements for admission to the California State University or the University of California is not an extracurricular or cocurricular activity as defined by this section.

(5) For purposes of this subdivision, "satisfactory educational progress" shall include, but not be limited to, the following:

(A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade point average in all enrolled courses on a 4.0 scale.

(B) Maintenance of minimum progress toward meeting the high school graduation requirements prescribed by the governing board.

(6) For purposes of this subdivision, "previous grading period" does not include any grading period in which the pupil was not in attendance for all, or a majority of, the grading period due to absences excused by the school for reasons such as serious illness or injury, approved travel, or work. In that event, "previous grading period" is deemed to mean the grading period immediately prior to the grading period or periods excluded pursuant to this paragraph.

(7) A program that has, as its primary goal, the improvement of academic or educational achievements of pupils is not an extracurricular or cocurricular activity as defined by this section.

(8) The governing board of each school district may adopt, as part of its policy established pursuant to this subdivision, provisions that would allow a pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), in the previous grading period to remain eligible to participate in extracurricular and cocurricular activities during a probationary period. The probationary period shall not exceed one semester in length, but may be for a shorter period of time, as determined by the governing board of the school district. A pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), during the probationary period shall not be allowed to participate in extracurricular and cocurricular activities in the subsequent grading period.

(9) Nothing in this subdivision shall preclude the governing board of a school district from imposing a more stringent academic standard than that imposed by this subdivision. If the governing board of a school district imposes a more stringent academic standard, the governing board shall establish the criteria for participation in extracurricular and cocurricular activities at a meeting open to the public pursuant to Section 35145.

The governing board of each school district shall annually review the school district policies adopted pursuant to the requirements of this section.

(b) (1) On or before July 1, 1994, the governing board of each school district shall, as a condition for the receipt of school apportionments from the state school fund, adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district. This requirement does not apply to any school district that has only one school or any school district with schools that do not serve any of the same grade levels.

(2) The policy shall include all of the following elements:

(A) It shall provide that the parents or guardian of each schoolage child who is a resident in the district may select the schools the child shall attend, irrespective of the particular locations of his or her residence within the district, except that school districts shall retain

the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans.

(B) It shall include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that selection of pupils to enroll in the school is made through a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance. For purposes of this subdivision, the governing board of the school district shall determine the capacity of the schools in its district. However, school districts may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants. This subdivision shall not be construed to prohibit school districts from using academic performance to determine eligibility for, or placement in, programs for gifted and talented pupils established pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(C) It shall provide that no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

(3) Notwithstanding the requirement of subparagraph (B) of paragraph (2) that the policy include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that the selection is made through a random, unbiased process, the policy may include any of the following elements:

(A) It may provide that special circumstances exist that might be harmful or dangerous to a particular pupil in the current attendance area of the pupil, including, but not limited to, threats of bodily harm or threats to the emotional stability of the pupil, that serve as a basis for granting a priority of attendance outside the current attendance area of the pupil. A finding of harmful or dangerous special circumstances shall be based upon either of the following:

(i) A written statement from a representative of the appropriate state or local agency, including, but not limited to, a law enforcement official or a social worker, or properly licensed or registered professionals, including, but not limited to, psychiatrists, psychologists, or marriage, family and child counselors.

(ii) A court order, including a temporary restraining order and injunction, issued by a judge.

A finding of harmful or dangerous special circumstances pursuant to this subparagraph may be used by a school district to approve transfers within the district to schools that have been deemed by the school district to be at capacity and otherwise closed to transfers that are not based on harmful or dangerous special circumstances.

(B) It may provide that any pupil attending a school prior to July 1, 1994, may be considered a current resident of that school for

purposes of this section until the pupil is promoted or graduates from that school.

(C) It may provide that no pupil who was on a waiting list for a school or specialized program, on or before July 1, 1994, pursuant to a then-existing district policy on transfers within the district, shall be displaced by pupils transferring after July 1, 1994, from outside the attendance area, as long as the continued maintenance on a waiting list remains consistent with the former policy.

(D) It may provide that schools receiving requests for admission shall give priority for attendance to siblings of children already in attendance in that school and to children whose parent or legal guardian is assigned to that school as his or her primary place of employment.

(E) It may include a process by which the school district informs parents or guardians that certain schools or grade levels within a school are currently, or are likely to be, at capacity and, therefore, those schools or grade levels are unable to accommodate any new pupils under the open enrollment policy.

(4) It is the intent of the Legislature that, upon the request of the pupil's parent or guardian and demonstration of financial need, each school district provide transportation assistance to the pupil to the extent that the district otherwise provides transportation assistance to pupils.

CHAPTER 390

An act to amend and renumber Section 39619 of, and to add Section 17584.1 to, the Education Code, relating to school facilities.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Because of the diminishing funds available through the excess repayments from the State School Building Aid Program, the state has been unable to fully fund the maximum amount of its contribution to the deferred maintenance fund authorized by law since the early 1980's.

(b) School districts have the expectation that state funds will be available to match the local funds they set aside to meet their deferred maintenance needs.

(c) The state's practice of not providing consistent, ongoing funding for deferred maintenance purposes has resulted in greater future facilities costs and has reduced the quality of education that can be provided to the state's 5.6 million public school pupils.

(d) If repairs to school facilities are continually deferred, school districts eventually face more expensive investments, including, but not limited to, critical repairs, major rehabilitation, or complete replacement. School districts should be discouraged from deferring maintenance projects in the short run, because inadequate ongoing maintenance reduces the useful life of facilities resulting in increased capital outlay needs, and putting more pressure on schools to access more expensive bond dollars in the long run.

(e) Approximately $2.4 billion in backlogged, unfunded deferred maintenance needs exist for K–12 schools statewide.

(f) Educational research suggests a positive relationship between pupil achievement and the condition of the facility in which pupils are schooled.

(g) It is important for school facilities to be maintained in order to provide a safe, clean, adequate environment for teachers to teach effectively and for pupils to be educated properly and to excel academically.

SEC. 2. Section 39619 of the Education Code is amended and renumbered to read:

17584. (a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 17582 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 17582, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of $^1/_2$ percent of the district's current-year revenue limit average daily attendance multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4, for the second prior fiscal year, exclusive of any amounts expended for capital outlay or debt service, to the extent of funds available.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than $^1/_2$ percent of the district's current-year revenue limit average daily

attendance, multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4 for the second prior fiscal year, exclusive of any amounts expended for capital outlay or debt service.

SEC. 3. Section 17584.1 is added to the Education Code, to read:

17584.1. (a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside $^1/_2$ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purposes of this section is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard.

SEC. 3.5. Section 17584.1 is added to the Education Code, to read:

17584.1. (a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the major maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside one-half of 1 percent of its current-year revenue limit average daily attendance for major maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with

copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include all of the following:

(1) A schedule of the complete school facilities major maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its major maintenance program and, if eligible, to participate in the state major maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities major maintenance needs without setting aside the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purpose of this section is to inform the public regarding the local decisionmaking process relating to the major maintenance of school facilities, and to provide a foundation for local accountability in that regard.

SEC. 4. This bill and A.B. 148 both make amendments relating to funding of school facility maintenance. A.B. 148, in part, renames the State Deferred Maintenance Fund to the School Major Maintenance Match Fund and makes conforming changes relating to related local school district funds. Section 3.5 of this bill contains provisions that conform to the name change relating to the state and local funds proposed in A.B. 148, and Section 3 of this bill does not contain those conforming changes. Therefore, Section 3.5 of this bill shall become operative only if (1) A.B. 148 contains the provisions renaming the related funds, and (2) A.B. 148 is enacted and takes effect on or before January 1, 2000, in which case Section 3 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.

CHAPTER 391

An act to amend Sections 17980 and 17980.6 of the Health and Safety Code, relating to housing.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 17980 of the Health and Safety Code is amended to read:

17980. (a) If any building is constructed, altered, converted, or maintained in violation of any provision of, or of any order or notice that gives a reasonable time to correct that violation issued by an enforcement agency pursuant to, this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency shall, after 30 days' notice to abate the nuisance, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any building and has determined that the building is a substandard building, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building. The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require vacation and demolition or may itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done as scheduled.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option which cannot be completed within a reasonable period of time, as determined by the department, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to

the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element.

(c) (1) Notwithstanding subdivision (b) and notwithstanding local ordinances, tenants in a residential building shall be provided notice of any violation described in subdivision (a) which affects the health and safety of the occupants and which violates Section 1941.1 of the Civil Code, an order of the code enforcement agency issued after inspection of the premises declaring the dwelling to be substandard, the enforcement agency's decision to repair or demolish, or the issuance of a building or demolition permit following the abatement order of an enforcement agency.

(2) Notice pursuant to this subdivision shall be provided to each affected residential unit by the enforcement agency that issued the order or notice, in the manner prescribed by subdivision (a) of Section 17980.6.

(d) All notices issued by the enforcement agency to correct violations or to abate nuisances shall contain a provision notifying the owner that, in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

(e) The enforcement agency may charge the owner of the building for its postage or mileage cost for sending or posting the notices required to be given by this section.

SEC. 2. Section 17980.6 of the Health and Safety Code is amended to read:

17980.6. (a) If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, or any other rule or regulation promulgated pursuant to the provisions of this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair pursuant to this part. Any order or notice pursuant to this subdivision shall be provided either by both posting a copy of the order or notice in a conspicuous place on the property and by first-class mail to each affected residential unit, or by posting a copy of the order or notice in a conspicuous place on the property and in a prominent place on each affected residential unit. The order or notice shall include, but is not limited to, all of the following:

(1) The name, address, and telephone number of the agency that issued the notice or order.

(2) The date, time, and location of any public hearing or proceeding concerning the order or notice.

(3) Information that the lessor cannot retaliate against a lessee pursuant to Section 1942.5 of the Civil Code.

(b) If the owner does not correct the condition that caused the violation within a reasonable time after issuance of the notice or order, the enforcement agency may, in addition to any other remedies provided by law, seek the remedies provided for in Section 17980.7 if the court finds the owner responsible for a violation of this part and orders repairs as part of a civil or criminal judgment against the owner, or in a stipulation to a judgment by the owner which includes provisions governing repairs.

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.

CHAPTER 392

An act to add Chapter 4.1 (commencing with Section 56375) to Part 30 of the Education Code, relating to special education.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. (a) The Legislature finds and declares that individuals with exceptional needs are not being appropriately recognized when they complete their schooling by means of an alternative course of study, or when they satisfactorily meet the goals and objectives in their individualized education program, or have satisfactorily attended high school, participated in the instruction prescribed in their individualized education program and have met their individualized education program transition plan.

(b) The Legislature further finds and declares that individuals with exceptional needs are often excluded from participation in graduation ceremonies and related activities even though they have achieved or completed what was prescribed in their individualized education program during their high school years.

(c) It is, therefore, the intent of the Legislature that Chapter 4.1 (commencing with Section 56375) be added to Part 30 of the Education Code to recognize the educational achievement or completion of individuals with exceptional needs when they complete high school and allow these individuals to participate in

graduation ceremonies and related activities along with their nondisabled peers.

SEC. 2. Chapter 4.1 (commencing with Section 56375) is added to Part 30 of the Education Code, to read:

CHAPTER 4.1. RECOGNITION FOR EDUCATIONAL ACHIEVEMENT OR COMPLETION OF PROGRAM

56375. Notwithstanding Section 51412 or any other provision of law, a local educational agency may award an individual with exceptional needs a certificate or document of educational achievement or completion if the requirements of subdivision (a), (b), or (c) are met.

(a) The individual has satisfactorily completed a prescribed alternative course of study approved by the governing board of the school district in which the individual attended school or the school district with jurisdiction over the individual and identified in his or her individualized education program.

(b) The individual has satisfactorily met his or her individualized education program goals and objectives during high school as determined by the individualized education program team.

(c) The individual has satisfactorily attended high school, participated in the instruction as prescribed in his or her individualized education program, and has met the objectives of the statement of transition services.

56376. An individual with exceptional needs who meets the criteria for a certificate or document described in Section 56375 shall be eligible to participate in any graduation ceremony and any school activity related to graduation in which a pupil of similar age without disabilities would be eligible to participate. The right to participate in graduation ceremonies does not equate a certificate or document described in Section 56375 with a regular high school diploma.

56377. It is not the intent of the Legislature by enacting this chapter to eliminate the opportunity for an individual with exceptional needs to earn a standard diploma issued by a local or state educational agency when the pupil has completed the prescribed course of study and has passed the proficiency requirements with or without differential standards pursuant to Section 51215.

56378. On or before July 1, 2000, the Advisory Commission on Special Education shall, pursuant to Section 33595, study and report to the State Board of Education, the Superintendent of Public Instruction, the Legislature, and the Governor on the practice of awarding certificates or documents of educational achievement or completion and diplomas, as appropriate, to individuals with exceptional needs. The report shall contain recommendations for

improving the system of recognition for educational achievement or completion of studies to individuals with exceptional needs.

CHAPTER 393

An act to amend Sections 11125, 11125.4, 11125.5, 11130, and 11130.3 of the Government Code, relating to open meetings.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 11125 of the Government Code is amended to read:

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7 shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed in closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice.

(c) The notice of a meeting of an advisory body that is a state body as defined in Section 11121.8 shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

(d) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

SEC. 2. Section 11125.4 of the Government Code is amended to read:

11125.4. (a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or

secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

SEC. 3. Section 11125.5 of the Government Code is amended to read:

11125.5. (a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee

thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

SEC. 4. Section 11130 of the Government Code is amended to read:

11130. (a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in-camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

SEC. 5. Section 11130.3 of the Government Code is amended to read:

11130.3. (a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

SEC. 6. It is the intent of the Legislature, in amending Sections 11130 and 11130.3 of the Government Code, to supersede the decision of the California Supreme Court in Regents of the University of California v. Superior Court (Molloy) (1999) 20 Cal.4th 509, in which the Court held that the only remedy under the Bagley-Keene Act for an action taken in violation of that act is to bring a lawsuit to nullify the action within 30 days.

SEC. 7. The amendments to Sections 11125, 11125.4, and 11125.5 of the Government Code made by this act shall not be implemented until July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99.

CHAPTER 394

An act to amend Section 53292 of the Government Code, relating to local agency firefighters.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 53292 of the Government Code is amended to read:

53292. (a) Whenever a special district or joint powers agency that provides fire protection or a city fire department is dissolved or the area it serves is decreased by reason of a consolidation, merger, incorporation, annexation, or contract, and the district, joint powers agency, or city fire department taking over the duties of the dissolved or decreased district, joint powers agency, or department decides to hire additional firefighters, it shall give first choice for the positions to be filled to firefighters employed by the dissolved or decreased district, joint powers agency, or department. As nearly as possible, the firefighters who are hired shall be given positions with a rank comparable to that which they held in the dissolved or decreased district, joint powers agency, or department. No firefighter shall be hired who is over the mandatory retirement age of the district, joint powers agency, or city fire department which is taking over the duties of the dissolved or decreased district, joint powers agency, or department.

(b) Notwithstanding any other provision of law, where firefighters are hired as a result of the consolidation, merger, incorporation, annexation, or contract, the seniority or other employment rights of the employees of the district, joint powers agency, or fire department taking over the duties of the dissolved or decreased district, joint powers agency, or department shall not be impaired as a result of the consolidation, merger, incorporation, annexation, or contract, except as otherwise agreed upon in a county, other than a county of the first class, in a memorandum of understanding with each employee organization, which has been recognized pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, and which represents employees of the district, joint powers agency, or department taking over the duties of the dissolved or decreased district, joint powers agency, or department who are in classes affected by the consolidation, merger, incorporation, annexation, or contract.

CHAPTER 395

An act relating to hazardous substances.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. (a) For purposes of this section the following definitions apply:

(1) "City" means the City of Sacramento.

(2) "Completion of the city's land use planning process" means the adoption, after January 1, 1999, of a general plan amendment and rezoning of the site pursuant to the city's land use process.

(3) "Site" means the site at 3675 Western Pacific Avenue in Sacramento, California, which is the subject of response action approved and overseen by the Department of Toxic Substances Control pursuant to Enforceable Agreement No. HSA 86/87-015EA issued by the department on March 26, 1987.

(b) (1) The Legislature finds and declares that the final remedial action plan prepared and approved in 1995 pursuant to the enforceable agreement for the site expressly recognizes that the city is processing a change in the land use for the site, including a general plan amendment and rezoning, and that the city's final land use plan for the site may require that additional portions of the site be remediated to unrestricted use levels beyond the area indicated in the 1995 final remedial action plan.

(2) The Legislature further finds and declares that a general statute cannot be made applicable to the site, within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, due to the unique circumstances at the site. At this site, the department has approved a remedial action plan specifying a level of cleanup protective of human health and safety based on current land use even though the department is aware that the local government, the property owner, and the community all intend and plan that the site will not remain in its current use but will ultimately be put to a more intense use with more potential for human exposure to any residual contamination. The department specifically acknowledges, in a memorandum dated June 30, 1998, that unique circumstances are present at the site.

(c) Notwithstanding any other provision of law, the Department of Toxic Substances Control shall not make a determination that the response action at the site is complete, including, but not limited to, issuing a certification, a no further action letter, or a closure letter, or entering into a settlement or release of liability, until after the city has completed its land use planning process and all response actions necessary to conform to the approved land use plan are complete.

(d) This section does not apply to any portion of the site acquired by the Sacramento Regional Transit District in accordance with the Draft and Final Subsequent Environmental Impact Report and the Draft and Final Environmental Impact Statement for the South

Sacramento Corridor Light Rail Project, and all addenda and supplements attached thereto.

CHAPTER 396

An act to add Section 152 to the Penal Code, relating to wrongful concealment.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 152 is added to the Penal Code, to read:

152. (a) Every person who, having knowledge of an accidental death, actively conceals or attempts to conceal that death, shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year, or by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(b) For purposes of this section, "to actively conceal an accidental death" means any of the following:

(1) To perform an overt act that conceals the body or directly impedes the ability of authorities or family members to discover the body.

(2) To directly destroy or suppress evidence of the actual physical body of the deceased, including, but not limited to, bodily fluids or tissues.

(3) To destroy or suppress the actual physical instrumentality of death.

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.

CHAPTER 397

An act to amend Section 48209.16 of, and to add Section 48209.17 to, the Education Code, relating to school attendance.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 48209.16 of the Education Code is amended to read:

48209.16. This article shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 48209.17 is added to the Education Code, to read:

48209.17. On or before July 1, 2002, the Superintendent of Public Instruction shall report to the Governor and the Legislature on the effectiveness of this article and make recommendations regarding the continuation or modification of this article.

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.

CHAPTER 398

An act to add and repeal Article 15 (commencing with Section 18861) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Article 15 (commencing with Section 18861) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 15. Birth Defects Research Fund

18861. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Birth Defects Research Fund, which is established by Section 18862. That designation is to be used as a voluntary contribution on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General Fund after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled the "Birth Defects Research Fund" to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used for the California Birth Defects Monitoring Program.

(f) Notwithstanding any other provision, a voluntary contribution designation for the Birth Defects Research Fund shall not be added on the tax return until another voluntary contribution designation is removed, or until taxable years beginning on or after January 1, 2002, whichever occurs first.

(g) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18862. There is in the State Treasury the Birth Defects Research Fund to receive contributions made pursuant to Section 18861. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18861 to be transferred to the Birth Defects Research Fund. The Controller shall transfer from the Personal Income Tax Fund to the Birth Defects Research Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18861 for payment into that fund.

18863. All money transferred to the Birth Defects Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the State Department of Health Services for allocation to the birth defects monitoring program. Funds shall be allocated to the contract for the birth defects monitoring program authorized by

Section 103855 of the Health and Safety Code and may not be used for the department's administrative costs.

18864. It is the intent of the Legislature that this article create an additional funding source for the contract for the birth defects monitoring program and shall be used to supplement, not supplant, other funding sources for this program.

18865. (a) This article shall remain in effect only until January 1 of the fifth taxable year following the first appearance of the Birth Defects Research Fund on the tax return or January 1, 2007, whichever occurs first, and as of that date is repealed, unless a later enacted statute, that is enacted before the applicable date, deletes or extends that date.

(b) If, in any calendar year after the first taxable year the Birth Defects Research Fund appears on the tax return, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contribution.

(c) For each calendar year, beginning with the second calendar year the Birth Defects Research Fund appears on the tax return, or 2004, whichever occurs first, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

———

CHAPTER 399

An act to amend Sections 361.5, 366.21, and 366.22 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

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

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

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time

period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

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

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

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

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

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

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

taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

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

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

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

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

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

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

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

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this paragraph, "serious danger" means that without the

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

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

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

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

(13) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(14) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

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

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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

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

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if

services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

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

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

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

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

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

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

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties

that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

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

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

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

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

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

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

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

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

SEC. 1.1. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

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

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

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a

substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the

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

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

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

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

(13) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(14) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or

refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

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

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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

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

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child

bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

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

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

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

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

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

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

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and

the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status. The evaluation of the minor's scholastic status shall include whether the child has been identified as having exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or disabilities justifying accommodations as described in Chapter 16 of Title 29 of the United States Code Annotated; and any information concerning whether the right of the parent or guardian to make educational decisions for the child has previously been limited by the court under Section 7579.5 of the Government Code; and whether the parent or guardian has previously designated an educational representative.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

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

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

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

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

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

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

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

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

SEC. 1.2. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months from the date the child entered foster care, except as otherwise provided in paragraph (3).

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

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, "a sibling group" shall mean two or more children who are related to each other as full or half-siblings.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) , (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in paragraph (3), the court shall inform the parent or guardian that the

failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

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

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

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

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

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

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

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

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

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the

child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

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

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

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

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

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

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

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

(13) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(14) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

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

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that,

based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

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

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

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

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

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

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

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

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

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

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the

capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

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

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

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

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

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

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

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

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

SEC. 1.3. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the child and the

relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months from the date the child entered foster care, except as otherwise provided in paragraph (3).

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

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, "a sibling group" shall mean two or more children who are related to each other as full or half-siblings.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) , (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court

shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in paragraph (3), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the

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

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

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

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

(13) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(14) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or

refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

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

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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

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

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child

bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

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

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

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

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

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

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

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status. The evaluation of the minor's scholastic status shall include whether the child has been identified as having exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or disabilities justifying accommodations as described in Chapter 16 of Title 29 of the United States Code Annotated; and any information concerning whether the right of the parent or guardian to make educational decisions for the child has previously been limited by the court under Section 7579.5 of the Government Code; and whether the parent or guardian has previously designated an educational representative.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

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

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

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

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

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

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

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

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

SEC. 2. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative care givers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative care givers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative care giver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her

recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be

returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that

return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties

that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 2.1. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the

hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative care givers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative care givers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption

agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative care giver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return

would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined

pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status. The evaluation of the minor's scholastic status shall include whether the child has been identified as having exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or disabilities justifying accommodations as described in Chapter 16 of Title 29 of the United States Code Annotated; and any information concerning whether the right of the parent or guardian to make educational decisions for the child has previously been limited by the court under Section 7579.5 of the Government Code; and whether the parent or guardian has previously designated an educational representative.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 2.2. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative care givers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed

adoption agency shall indicate that the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative care givers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative care giver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5 and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned

to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian in overcoming the problems that led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) , (2) or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or guardian at the

permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 2.3. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative care givers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative care givers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative care giver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional

well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5 and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for

some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian in overcoming the problems that led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits

of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) , (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child

will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status. The evaluation of the minor's scholastic status shall include whether the child has been identified as having exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or disabilities justifying accommodations as described in Chapter 16 of Title 29 of the United States Code Annotated; and any information concerning whether the right of the parent or guardian to make educational decisions for the child has previously been limited by the court under Section 7579.5 of the Government Code; and whether the parent or guardian has previously designated an educational representative.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the

adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 3. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or guardian. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the

capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 4. (a) Section 1.1 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, and (3) AB 740 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 645, in which case 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 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 740. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, (3) AB 645 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 740, in which case 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 361.5 of the Welfare and Institutions Code proposed by this bill, AB 645, and AB 740. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) all three bills amend Section 361.5 of the Welfare and Institutions

Code, and (3) this bill is enacted after AB 645 and AB 740, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 5. (a) Section 2.1 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, and (3) AB 740 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 645, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 740. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, (3) AB 645 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 740, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by this bill, AB 645, and AB 740. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) all three bills amend Section 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 645 and AB 740, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

CHAPTER 400

An act to add Section 44302 of the Education Code, relating to teacher credentialing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 44302 is added to the Education Code, to read:

44302. The Commission on Teacher Credentialing shall regularly notify local education agencies of the various provisions in current law that allow the assignment of personnel when a fully qualified teacher is not available and a substitute has served for the maximum days permitted by law, including emergency permits under Section 44300, long-term and short-term waivers under subdivision (m) of Section 44225, pre-intern certificates under Section 44305, and intern permits under Sections 44235, 44250, and 44464. When fulfilling the

notification requirements of this section, the commission shall utilize a variety of approaches, including, but not limited to, correspondence, annual workshops for credential analysts, a credential handbook, a waiver handbook, the commission website, and special telephone, fax, and e-mail lines for school districts and county offices of education. Additionally, the commission shall provide local education agencies with information about waiver requests including specific timelines, key steps, and appeal rights.

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 improve the educational instruction of pupils which is being adversely affected by the present severe shortage of credentialed teachers and the limitation imposed by the operation of a current regulation adopted by the Commission on Teacher Credentialing, it is necessary that this act take effect immediately.

CHAPTER 401

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

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 25160.1 of the Health and Safety Code is amended to read:

25160.1. (a) The department shall revise the hazardous waste code identification system established in Appendix XII of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations. The revised hazardous waste code identification system shall meet the requirements of subdivision (b).

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

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

(2) Non-RCRA hazardous wastes shall be identified by hazardous waste code identification designations that are consistent with the federal waste code identification designations and shall be based on the criteria that causes the waste to be regulated as a hazardous waste in this state. The identification code system shall not require the

hazardous wastes subject to this paragraph to be identified by a RCRA hazardous waste code identification.

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

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

(B) Significant benefit to compliance and enforcement activities.

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

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

(1) Determine an operative date for the regulations establishing the revised hazardous waste code identification system in order to allow for a reasonable transition period, which shall not exceed three years after the date the revised waste code regulations are adopted. If the department determines, prior to the end of that three-year period, that additional time is necessary for the new waste code system to become operative, the department may revise the regulations to extend the transition period and the operative date for up to an additional two years.

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

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

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

(C) The regulatory procedure for the amendment of existing permits, registrations, licenses, certifications, or other authorizations shall apply to all applicable facilities on the operative date of the revised hazardous waste code identification system, as determined by the department pursuant to paragraph (1) of subdivision (c).

(3) Conduct a public education, outreach, and notification program to ensure that users of the hazardous waste code

identification system are reasonably notified of and understand the changes made to the system pursuant to this section.

CHAPTER 402

An act relating to community colleges.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) In 1986, Assembly Bill 3049 of the 1985–86 Regular Session (Chapter 1465 of the Statutes of 1986) called for a comprehensive review of community college financing based on the reform proposals of the Commission for Review of the Master Plan for Higher Education. The recommendations of the review were transmitted by the Chancellor of the California Community Colleges to the Legislature in 1987, and were subsequently adopted in Assembly Bill 1725 of the 1987–88 Regular Session (Chapter 973 of the Statutes of 1988).

(b) That review resulted in a restructuring of the community college financing system, aimed at making it more consistent with the status and role of the colleges as postsecondary institutions. The new structure was based on a program-based funding formula that weighed various categories, such as instruction, instructional services, student services, maintenance and operations, and institutional support. In addition, multicollege district and small district factors were considered in funding formulas, as well as equalization funding for districts below the program-based funding standards.

(c) After a decade of experience, it is appropriate to review the funding structure in order to ensure that it provides access to high-quality educational services to California students irrespective of the college or district at which they are enrolled. To that end, the Chancellor of the California Community Colleges has convened a broad-based task force on community college funding formulas to address issues related to program-based funding, enrollment growth, equalization, cost-of-living adjustments, and noncredit instruction. For example, the task force will consider whether districts with significant underserved adult populations receive appropriate weight in enrollment growth allocation formulas.

SEC. 2. Notwithstanding Section 7550.5 of the Government Code, the Board of Governors of the California Community Colleges shall report to the Legislature and the Governor on community

college financing. In preparing the report, the board of governors shall consider issues regarding program-based funding criteria, the enrollment growth funding formula, the equalization funding formula, the cost-of-living adjustment, and funding formulas for noncredit instruction. The board of governors shall attempt to provide this report to the Legislature and the Governor on or before January 15, 2000. The report shall identify any budgetary changes or statutory modifications necessary to accomplish the recommendations of the board of governors.

CHAPTER 403

An act to amend Section 2089 of the Business and Professions Code, to add Section 1254.7 to the Health and Safety Code, relating to the healing arts.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 2089 of the Business and Professions Code is amended to read:

2089. (a) Each applicant for a physician's and surgeon's certificate shall show by official transcript or other official evidence satisfactory to the Division of Licensing that he or she has successfully completed a medical curriculum extending over a period of at least four academic years, or 32 months of actual instruction, in a medical school or schools located in the United States or Canada approved by the division, or in a medical school or schools located outside the United States or Canada which otherwise meets the requirements of this section. The total number of hours of all courses shall consist of a minimum of 4,000 hours. At least 80 percent of actual attendance shall be required. If an applicant has matriculated in more than one medical school, the applicant must have matriculated in the medical school awarding the degree of doctor of medicine or its equivalent for at least the last full academic year of medical education received prior to the granting of the degree.

(b) The curriculum for all applicants shall provide for adequate instruction in the following subjects:

Alcoholism and other chemical substance dependency, detection and treatment.

Anatomy, including embryology, histology, and neuroanatomy.

Anesthesia.

Biochemistry.

Child abuse detection and treatment.

Dermatology.

Geriatric medicine.
Human sexuality.
Medicine, including pediatrics.
Neurology.
Obstetrics and gynecology.
Ophthalmology.
Otolaryngology.
Pain management and end-of-life care.
Pathology, bacteriology, and immunology.
Pharmacology.
Physical medicine.
Physiology.
Preventive medicine, including nutrition.
Psychiatry.
Radiology, including radiation safety.
Spousal or partner abuse detection and treatment.
Surgery, including orthopedic surgery.
Therapeutics.
Tropical medicine.
Urology.

(c) The requirement that an applicant successfully complete a medical curriculum that provides instruction in pain management and end-of-life care shall only apply to a person entering medical school on or after June 1, 2000.

SEC. 2. Section 1254.7 is added to the Health and Safety Code, to read:

1254.7. (a) It is the intent of the Legislature that pain be assessed and treated promptly, effectively, and for as long as pain persists.

(b) Every health facility licensed pursuant to this chapter shall, as a condition of licensure, include pain as an item to be assessed at the same time as vital signs are taken. The health facility shall ensure that pain assessment is performed in a consistent manner that is appropriate to the patient. The pain assessment shall be noted in the patient's chart in a manner consistent with other vital signs.

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.

CHAPTER 404

An act to amend Section 18979 of the Government Code, and to amend Section 891 of, and to repeal Section 891 of, the Military and Veterans Code, relating to veterans.

[Approved by Governor September 15, 1999. Filed with Secretary of State September 15, 1999.]

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

SECTION 1. Section 18979 of the Government Code is amended to read:

18979. (a) In making appointments to positions performing the duties of disabled veterans' outreach program representatives in the disabled veterans' outreach program or successor program of the Employment Development Department, appointments shall be made in the following order of preference:

(1) Any disabled veteran.

(2) Any veteran.

(b) For the purposes of this section, "disabled veteran" and "veteran" have the same meaning as those terms are defined in Section 4211 of Title 38 of the United States Code.

(c) A person who does not meet the criteria specified in subdivision (a) shall not be appointed to the position of disabled veterans' outreach program representative.

SEC. 2. Section 891 of the Military and Veterans Code, as amended by Section 1 of Chapter 822 of the Statutes of 1996, is amended to read:

891. (a) A dependent of a veteran applying for aid under this article shall be over 14 years of age or shall have entered the ninth grade, and shall be a native of or shall have lived in this state for five of the nine years immediately preceding the date that the application is filed.

(b) Any dependent of a veteran who has attained eligibility pursuant to this article while under 21 years of age may continue to receive the benefits of this article until the needed training is completed or until he or she attains the age of 27 years, whatever first occurs.

(c) The eligibility limitations of subdivision (b) shall not apply to the spouse or dependent widow of a veteran. However, the spouse or dependent widow of a veteran shall be limited to not more than 48 months, of full-time training, or the equivalent thereof in part-time training.

(d) Notwithstanding the eligibility limitations of subdivision (b), a dependent who has honorably served in the Armed Forces of the United States may be granted an extension of training through the age of 30 years.

(e) The eligibility limitations of subdivisions (a) and (b) shall not apply to the dependent of a veteran as defined in paragraph (4) of subdivision (a) of Section 890.

SEC. 3. Section 891 of the Military and Veterans Code, as added by Section 2 of Chapter 822 of the Statutes of 1996, is repealed.

CHAPTER 405

An act to add Chapter 5.2 (commencing with Section 8333) to Division 1 of Title 2 of the Government Code, relating to state government.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Chapter 5.2 (commencing with Section 8333) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 5.2. GRANT INFORMATION ACT OF 1999

8333. This chapter shall be known and may be cited as the Grant Information Act of 1999. All state agencies that have Internet websites shall implement to the best of their ability this act in a manner that is consistent with the statewide strategy for electronic commerce as established by the Department of Information Technology.

8334. (a) State agencies may make available on the Internet a listing of all grants administered by that agency, which shall provide instructions on filing grant applications electronically, or on the manner in which to download, complete, and mail grant applications to the state agency, or both, consistent with whichever method the agency establishes for the filing of grant applications.

(b) Each state agency may make any printed grant application form used by the agency to award grants that are subject to administration by that agency available on the Internet, and shall provide the instructions specified in subdivision (a).

(c) State agencies making grant application forms available on the Internet shall, to the extent feasible, advise individuals calling the state agency for information about a grant program of both of the following:

(1) The availability of grant information on the Internet.

(2) That many public libraries provide Internet access.

(d) Each state agency posting a listing of grants administered by that agency pursuant to subdivision (a) shall include an executive

summary of each grant as part of that listing that includes, but is not limited to, all of the following:

(1) The title of the grant opportunity and grant identification number.

(2) A brief description of the request for proposals (RFP) or request for assistance (RFA).

(3) Grant eligibility requirements.

(4) Geographic limitations, if any.

(5) Description of the total available grant funding, the number of awards, and the amounts per award.

(6) Period of time covered by the grant.

(7) Date the request for proposals (RFP) or request for assistance (RFA) is issued.

(8) Deadline for proposals to be submitted.

(9) Internet address for electronic submission, when appropriate.

(10) Contact information.

(e) (1) Notwithstanding subdivision (a) of Section 11000, "state agency" as used in this chapter includes the Office of the Chancellor of the California State University, but does not include any individual campus of the California State University or any auxiliary enterprise affiliated with the California State University.

(2) This chapter shall only apply to the Office of the Chancellor of the California State University if the decision to award or not to award funds to an individual or entity filing a grant application is under the control of the Office of the Chancellor of the California State University. This chapter shall not apply to opportunities available solely to the campuses of the California State University and auxiliary enterprises affiliated with the California State University to apply for funds to the Office of the Chancellor of the California State University.

(f) "Grant" as used in this chapter means a solicited or unsolicited proposal, including, but not limited to, a request for proposals (RFP) and a request for applications (RFA), to furnish assistance to another entity so that the latter may carry out its own program. The term shall not include the procurement of goods or services for a state agency nor the acquisition, construction, alteration, improvement, or repair of real property for a state agency.

(g) This chapter shall not be implemented until July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99.

CHAPTER 406

An act to amend Section 4980.41 of the Business and Professions Code, relating to licensing.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 4980.41 of the Business and Professions Code is amended to read:

4980.41. All applicants for licensure shall complete the following coursework or training in order to be eligible to sit for the licensing examinations:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors, which shall include, but not be limited to, the following areas of study:

(1) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(2) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage, family, and child counseling, including family law.

(3) The current legal patterns and trends in the mental health profession.

(4) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(5) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirements contained in Section 4980.40.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 or 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. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(d) Except for persons who began graduate study prior to January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(e) Except for persons who began graduate study prior to January 1, 1995, a master's or doctor's degree qualifying for licensure shall include coursework in spousal or partner abuse assessment, detection, and intervention. Coursework required under this

subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. The requirement for coursework in spousal or partner abuse detection and treatment shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(f) Except for persons who began graduate study prior to January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychological testing. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(g) Except for persons who began graduate study prior to January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychopharmacology. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(h) The requirements added by subdivisions (f) and (g) are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended in any way to expand or restrict the scope of licensure for marriage and family therapists.

CHAPTER 407

An act to amend Section 10133.1 of the Business and Professions Code, and to amend Section 50707 of, and to repeal Section 50704 of, the Financial Code, relating to residential mortgage lending.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 10133.1 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(b) Persons described in paragraph (1), (2), or (3), as follows, are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in

connection with loans secured directly or collaterally by liens on real property:

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

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

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

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

(c) (1) Subdivision (d) of Section 10131 does not apply to an employee of a real estate broker who, on behalf of the broker, assists the broker in meeting the broker's obligations to its customers in residential mortgage loan transactions, as defined in Section 50003 of the Financial Code, where the lender is an institutional lender, as defined in Section 50003 of the Financial Code, provided the employee does not participate in any negotiations occurring between the principals.

(2) A broker shall exercise reasonable supervision and control over the activities of nonlicensed employees acting under this subdivision, and shall comply with Section 10163 for each location where the nonlicensed persons are employed.

This section does not restrict the ability of the commissioner to discipline a broker or corporate broker licensee or its designated officer, or both the corporate broker licensee and its designated officer, for misconduct of a nonlicensed employee acting under this subdivision, or, pursuant to Section 10080, to adopt, amend, or repeal rules or regulations governing the employment or supervision of an employee who is a nonlicensed person as described in this subdivision.

SEC. 2. Section 50704 of the Financial Code is repealed.

SEC. 3. Section 50707 of the Financial Code is amended to read:

50707. (a) This chapter shall remain operative until June 30, 2005, on which date it shall be repealed, unless a later enacted statute extends or deletes that date. The purpose of this provision is to allow the Legislature to assess whether this chapter (1) increases or decreases the protections and remedies for consumers of brokerage services compared to provisions of the Real Estate Law applicable to mortgage brokerage activities; and (2) increases or decreases the cost to the state of regulating mortgage brokerage activities.

(b) On or before December 31, 1999, the Secretary of the Business, Transportation and Housing Agency shall conduct a study of the

matters referenced in subdivision (a) of this section, and deliver a report summarizing the findings of the study to both the Assembly Committee on Rules and Senate Rules Committee, which shall refer the report to appropriate policy committees. The report shall be prepared from then existing agency resources.

(c) On or before December 31, 2002, the Secretary of the Business Transportation and Housing Agency shall prepare a second report, which shall: (1) update the findings of the report due December 31, 1999, and (2) report, for the years 2000 and 2001, the number and the aggregate principal amount of closed residential mortgage loans secured by residential real estate in which licensees provided brokerage services pursuant to this chapter. This report shall be prepared from then existing agency resources.

CHAPTER 408

An act to add Section 367.7 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 367.7 is added to the Public Utilities Code, to read:

367.7. (a) It is the intent of the Legislature in enacting this section to ensure that individual customers do not experience rate increases as a result of the allocation of transition costs, in accordance with paragraph (2) of subdivision (e) of Section 367.

(b) The commission shall implement a methodology whereby the Power Exchange energy credit for a customer with a meter installed on or after June 30, 2000, that is capable of recording hourly data is calculated based on the actual hourly data for that customer. The Power Exchange energy credit for a customer with a meter installed before June 30, 2000, that is capable of recording hourly data shall, at the election of the customer, on a one-time basis before June 30, 2000, be calculated based on either (1) the actual hourly data for that customer or (2) the average load profile for that customer class. If the customer fails to make an election, that customer's Power Exchange energy credit shall continue to be based on the average load profile for that customer class.

(c) Additional incremental billing costs incurred as a result of the methodology implemented by the commission pursuant to subdivision (b) may be recoverable through rates for that customer class, if the commission finds that the costs are reasonable.

(d) The methodology implemented by the commission pursuant to subdivisions (b) and (c) shall not result in any shifts in cost between customer classes and shall be consistent with the firewall provision set forth in subdivision (e) of Section 367.

CHAPTER 409

An act to add Chapter 13 (commencing with Section 2850) to Part 4 of Division 4 of the Probate Code, relating to conservatorship.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Chapter 13 (commencing with Section 2850) is added to Part 4 of Division 4 of the Probate Code, to read:

CHAPTER 13. STATEWIDE REGISTRY

2850. (a) The Department of Justice shall maintain a Statewide Registry and shall make all information in the registry available to the court for any purpose, but shall otherwise be kept confidential. On request, the registry may disclose to the public whether an individual is or is not registered with the Statewide Registry. Except as otherwise provided in Section 2854, all persons who wish to serve as a conservator or guardian or who are currently serving as a conservator or guardian shall register with the Statewide Registry and shall re-register every three years thereafter.

(b) All conservators and guardians required to file information with the county clerk pursuant to Section 2340 and to register pursuant to this chapter shall file a signed declaration with the Statewide Registry. A person who signs a declaration pursuant to this subdivision asserting the truth of any material matter which he or she knows to be false is guilty of a misdemeanor punishable by imprisonment for up to one year in a county jail, or a fine of not more than two thousand dollars ($2,000), or both that fine and imprisonment. The declaration shall contain the following information:

(1) Full name.

(2) Professional name, if different from (1).

(3) Business address.

(4) Business telephone number or numbers.

(5) His or her educational background and professional experience, including verification of any college or graduate degree claimed.

(6) The names of the conservator's or guardian's current conservatees.

(7) The aggregate dollar value of all assets currently under the conservator's or guardian's supervision.

(8) Whether he or she has ever been removed for cause or resigned as conservator or guardian in a specific case, the circumstances of that removal or resignation, and the case names, court locations, and case numbers.

(c) On request, the registry may disclose to a member of the public the educational background and professional experience of a conservator or guardian registered with the Statewide Registry.

(d) The Department of Justice may charge a reasonable fee to persons registering and re-registering with the Statewide Registry for the cost of that registration. The Department of Justice shall issue a certificate of registration to each registrant.

(e) Each court clerk shall forward a copy of any complaint filed with that court, and found to be meritorious by that court, against a conservator or guardian in his or her capacity as a conservator or guardian for inclusion in the Statewide Registry. The Statewide Registry shall place any copies of those complaints in the file of that conservator or guardian.

2851. (a) A court may not appoint a person as a conservator or guardian unless that person is registered with the Statewide Registry. In appointing a person as a conservator or guardian, the court shall examine and consider the information contained in the Statewide Registry for that person.

(b) Any person serving as a conservator or guardian prior to January 1, 2000, who does not register with the Statewide Registry by either January 1, 2001, or by the date of the next required review pursuant to Section 1850, whichever is sooner, shall be removed as a conservator or guardian by the court.

2852. (a) Any person who serves as a conservator or guardian without being registered with the Statewide Registry, who commits fraud in registering, who falsely asserts that he or she is registered, or who makes false claims or representations as to the nature of his or her file contained in the registry, shall be subject to a civil penalty in the amount of two hundred dollars ($200) for the first violation and a civil penalty in the amount of five hundred dollars ($500) for each subsequent violation, to be assessed and collected in a civil action brought by the Department of Justice. All civil penalties collected shall be deposited in the General Fund. A person who lawfully delays registration pursuant to subdivision (b) of Section 2851 shall not be subject to a civil penalty for serving as a conservator or guardian without being registered until the time that subdivision (b) of Section 2851 authorizes his or her removal for failure to register.

(b) Any court that removes a conservator or guardian for cause and any court that has accepted the resignation of a conservator or guardian shall notify the Statewide Registry of that removal and the

reason therefor. The courts shall consider that information prior to the appointment of a conservator or guardian pursuant to a subsequent petition for appointment as conservator or guardian.

2853. Notwithstanding any other provision of this chapter, in cases of urgency, where circumstances and justice warrant the appointment of a conservator or guardian and time is limited, a court may appoint a person as conservator or guardian without consulting the Statewide Registry or requiring registration prior to appointment.

2854. (a) This chapter does not apply to any public conservator, public guardian, or to any conservator or guardian who is related to the conservatee or ward by blood, marriage, or adoption. This chapter does not apply to any person who is not required to file information with the county clerk pursuant to Section 2340, to any person or entity subject to the oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including a supervised financial institution.

(b) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.

2855. It is the intent of the Legislature that both:

(a) Counties that provide for registration of conservators or guardians continue to do so, and that the Statewide Registry not replace county registration.

(b) Courts maintain oversight over the complaint process in order to safeguard the reputations of conservators and guardians against unfounded complaints.

2856. Any trustee may register with the Statewide Registry. It is the intent of the Legislature that trustees may register if they so desire, but that trustees are not required to register.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 410

An act to add Section 1507.3 to the Health and Safety Code, relating to care facilities.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 1507.3 is added to the Health and Safety Code, to read:

1507.3. (a) A residential facility that provides care to adults may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician or surgeon to remain in the facility when all of the following conditions are met:

(1) The facility agrees to retain the terminally ill resident and to seek a waiver on behalf of the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident, and is in substantial compliance with regulations governing the operation of residential facilities that provide care to adults.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks authorized for a residential facility under this chapter.

(6) The facility has obtained the agreement of those residents who share the same room with the terminally ill resident to allow the hospice caregivers into their residence.

(b) At any time that the licensed hospice, the facility, or the terminally ill resident determines that the resident's condition has changed so that continued residence in the facility will pose a threat to the health and safety to the terminally ill resident or any other resident, the facility may initiate procedures for a transfer.

(c) Nothing in this section is intended to expand the scope of care and supervision for a residential facility, as defined in this chapter, that provides care to adults nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident as authorized by this section.

(d) Nothing in this section shall require any care or supervision to be provided by the residential facility beyond that which is permitted in this chapter.

(e) Nothing in this section is intended to expand the scope of life care contracts or the contractual obligation of continuing care retirement communities as defined in Section 1771.

(f) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice.

(g) The department, in consultation with the State Fire Marshal, shall develop and expedite implementation of regulations related to residents who have been diagnosed as terminally ill who remain in the facility and who are nonambulatory that ensure resident safety but also provide flexibility to allow residents to remain in the least restrictive environment.

(h) Nothing in this section shall be construed to relieve a licensed residential facility that provides care to adults of its responsibility, for purposes of allowing a resident who has been diagnosed as terminally ill to remain in the facility, to do both of the following:

(1) With regard to any resident who is bedridden, as defined in subdivision (b) of Section 1569.72, to, within 48 hours of the resident's retention in the facility, notify the local fire authority with jurisdiction in the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(2) Secure a fire clearance approval from the city or county fire department, fire district, or any other local agency providing fire protection services, or the State Fire Marshal, whichever has primary fire protection jurisdiction.

———

CHAPTER 411

An act to amend Section 680 of the Business and Professions Code, relating to certified nurse assistants.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 680 of the Business and Professions Code is amended to read:

680. (a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse, or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.

(b) Facilities licensed by the State Department of Social Services, the State Department of Mental Health, or the State Department of Health Services, shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Mental Health, and the State Department of Health Services shall verify through periodic inspections that the policies required pursuant to subdivision (a) have been developed and implemented by the respective licensed facilities.

(c) For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

CHAPTER 412

An act to amend Section 2955.5 of the Civil Code, relating to hazard insurance.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 2955.5 of the Civil Code is amended to read:

2955.5. (a) No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

(b) A lender shall disclose to a borrower, in writing, the contents of subdivision (a), as soon as practicable, but before execution of any note or security documents.

(c) Any person harmed by a violation of this section shall be entitled to obtain injunctive relief and may recover damages and reasonable attorney's fees and costs.

(d) A violation of this section does not affect the validity of the loan, note secured by a deed of trust, mortgage, or deed of trust.

(e) For purposes of this section:

(1) "Hazard insurance coverage" means insurance against losses caused by perils which are commonly covered in policies described as a "Homeowner's Policy," "General Property Form," "Guaranteed Replacement Cost Insurance," "Special Building Form," "Standard Fire," "Standard Fire with Extended Coverage," "Standard Fire with Special Form Endorsement," or comparable insurance coverage to protect the real property against loss or damage from fire and other perils covered within the scope of a standard extended coverage endorsement.

(2) "Improvements" means buildings or structures attached to the real property.

SEC. 2. Section 1 of this bill shall become operative on July 1, 2000.

CHAPTER 413

An act to amend Section 779.36 of the Insurance Code, relating to credit insurance.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 779.36 of the Insurance Code is amended to read:

779.36. (a) The commissioner shall adopt regulations that become effective no later than January 1, 2001, specifying prima facie

rates based upon presumptive loss ratios, with rates which would be expected to result in a target loss ratio of 60 percent, or any other loss ratio as may be dictated after applying the factors contained in this subdivision, for each class of credit disability, credit unemployment, credit property, and credit life insurance. The prima facie rates shall be based upon loss experience filed with the commissioner, aggregated by class.

If any rate established under the commissioner's ratemaking authority produces actual loss ratios that are lower than the presumptive loss ratio, prospective rates may be adjusted, but no retroactive refunds shall be required. In order to provide insurers an opportunity to earn a fair and reasonable rate of return, the commissioner in the ratemaking process shall consider the following factors: acquisition costs, including commissions and other forms of compensation, expenses, profits, loss ratios, reserves, and other reasonable actuarial considerations.

(b) The commissioner shall provide for rate deviations. Upward and downward deviations shall be considered by the commissioner upon initiation by the department, or at the insurer's request at the time of review of annual experience reports filed by insurers, or as provided by regulations pursuant to Section 779.21. Requested deviation rates shall be deemed approved if not disapproved within 120 days after submission to the department for approval. Creditor and agent compensation shall be based upon the prima facie rate, and shall not be affected by a deviated rate pursuant to this subdivision. This subdivision does not prohibit an insurer from paying compensation that is less than the prima facie rate.

(c) The commissioner shall adopt regulations that become effective no later than January 1, 2001, specifying prima facie rates based upon presumptive loss ratios, with rates which would be expected to result in a target loss ratio of 60 percent, or any other loss ratio as may be dictated after applying the factors contained in this subdivision, for each class of joint life insurance, joint disability insurance, joint credit unemployment insurance, and joint credit property insurance. Those rates shall be expressed as a multiple of the prima facie rate for each class of insurance subject to subdivision (a), and shall be based upon loss experience filed with the commissioner, aggregated by class.

If any rate established under the commissioner's ratemaking authority produces actual loss ratios that are lower than the presumptive loss ratio, prospective rates may be adjusted, but no retroactive refunds shall be required. In order to provide insurers an opportunity to earn a fair and reasonable rate of return, the commissioner in the ratemaking process shall consider the following factors: acquisition costs, including commissions and other forms of compensation, expenses, profits, loss ratios, reserves, and other reasonable actuarial considerations.

(d) Loss ratios shall consist of the ratio of incurred losses to earned premiums in a specified reporting period.

(e) The commissioner shall, on an annual basis, make actual annual loss ratios under subdivisions (a) and (c) available to the public.

CHAPTER 414

An act to add Section 15655 to the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 15655 is added to the Welfare and Institutions Code, to read:

15655. (a) (1) Each long-term health care facility, as defined in Section 1418 of the Health and Safety Code or community care facility, as defined in Section 1502 of the Health and Safety Code that provides care to adults shall provide training in recognizing and reporting elder and dependent adult abuse, as prescribed by the Department of Justice. The Department of Justice shall, in cooperation with the State Department of Health Services and the State Department of Social Services, develop a minimal core training program for use by these facilities. As part of that training, long-term care facilities, including nursing homes and out-of-home care facilities, shall provide to all staff being trained a written copy of the reporting requirements and a written notification of the staff's confidentiality rights as specified in Section 15633.

(2) Compliance with paragraph (1) shall be completed by January 1, 2001, or, if the facility begins operation after July 31, 2000, within six months of the date of the beginning of the operation of the facility. Employees hired after June 1, 2001, shall be trained within 60 days of their first day of employment.

(b) Each long-term health care facility, as defined in Section 1418 of the Health and Safety Code, shall be subject to review by the State Department of Health Services Licensing and Certification Unit for compliance with the duties imposed in subdivision (a).

(c) Each community care facility, as defined in Section 1502 of the Health and Safety Code shall be subject to review by the State Department of Social Services Community Care Licensing Unit for compliance with the duties imposed in subdivision (a).

CHAPTER 415

An act to add Sections 126.5, 126.7, 130.5, and 130.7 to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to the Metropolitan Water District of Southern California.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 126.5 is added to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), to read:

126.5. (a) The Metropolitan Water District of Southern California and its member public agencies may not expend any public money for contracting with any private entity or person to undertake research or investigations with regard to the personal backgrounds or the statements of economic interest of, or the campaign contributions made to, elected officials who vote on public policies affecting the Metropolitan Water District of Southern California, or advocacy groups or interested parties who may have matters pending before the board of the Metropolitan Water District of Southern California or its member public agencies.

(b) Nothing in this section prevents any board member, officer, or employee of the Metropolitan Water District of Southern California or of a member public agency of that district from exercising the right to obtain public records pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

SEC. 2. Section 126.7 is added to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), to read:

126.7. (a) The Metropolitan Water District of Southern California shall establish and operate an Office of Ethics and adopt rules relating to internal disclosure, lobbying, conflicts of interest, contracts, campaign contributions, and ethics for application to its board members, officers, and employees consistent with the intent and spirit of the laws and regulations of the Los Angeles City Ethics Commission, the Fair Political Practices Commission, and the Los Angeles County Metropolitan Transportation Authority.

(b) The rules described in subdivision (a) shall address, and seek to avoid potential ethical abuses relating to, all of the following matters:

(1) The direct and indirect business relationships between board members, contractors, and vendors, and between board members and officers or employees of member public agencies.

(2) The solicitation of campaign contributions by board members, officers, or employees and the receipt of contributions from bidders, contractors, or subcontractors.

(3) Public notice and approval procedures for contracts of fifty thousand dollars ($50,000) or more.

(c) (1) The office shall operate as an independent entity that is not subject to political influence and shall be staffed with professional, qualified persons.

(2) The office shall adopt the rules described in subdivision (a) for approval by the board, educate the board, staff, contractors, and subcontractors concerning those rules, and shall investigate complaints concerning the violation of those rules.

(3) The office shall adopt procedures for protecting the confidentiality of sources, the job security of "whistle blowers," and the due process rights of the accused.

(d) Subject to paragraph (3) of subdivision (c), the office shall make available to the public the results of the investigations that it undertakes.

(e) The office shall propose, and the board shall adopt, a schedule of penalties for violations of the rules described in subdivision (a) by board members, officers, staff, or contractors.

(f) For any association of individuals or entities that includes board members, officers, or employees of the Metropolitan Water District of Southern California or of a member public agency of that district that is known by a name other than the Metropolitan Water District of Southern California or the name of a member public agency of the district, the rules of ethics shall prohibit any association structure or identification that is likely to mislead the public as to the association's true identity, its source of funding, or its purpose.

(g) Nothing in this section prohibits the Metropolitan Water District of Southern California, a member public agency of that district, or a board member, officer, or employee of the Metropolitan Water District of Southern California or of a member public agency of the district, from participating in, or providing funding in a clearly identifiable way for, an association formed for the purpose of undertaking legitimate activities, including, but not limited to, advocating on behalf of that association before a local agency, the Legislature, or the United States Congress.

SEC. 3. Section 130.5 is added to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), to read:

130.5. (a) The Legislature finds and declares all of the following:

(1) The Metropolitan Water District of Southern California reports that conservation provides 7 percent of its "water resource mix" for 1998, and conservation is projected to provide 13 percent of its total water resources by 2020. Conservation, water recycling, and groundwater recovery, combined, provide 12 percent of the district's total water resources for 1998 and those water resources are

projected to increase to 25 percent of the district's total water resources by 2020.

(2) It is the intent of the Legislature that the Metropolitan Water District of Southern California expand water conservation, water recycling, and groundwater recovery efforts.

(b) The Metropolitan Water District of Southern California shall place increased emphasis on sustainable, environmentally sound, and cost-effective water conservation, recycling, and groundwater storage and replenishment measures.

(c) The Metropolitan Water District of Southern California shall hold an annual public hearing, which may be held during a regularly scheduled meeting of the Board of Directors of the Metropolitan Water District of Southern California, during which the district shall review its urban water management plan, adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code, for adequacy in achieving an increased emphasis on cost-effective conservation, recycling, and groundwater recharge in accordance with this section. The Board of Directors of the Metropolitan Water District of Southern California may modify any ongoing program as necessary to meet that requirement, consistent with the district's urban water management plan.

(d) The district shall invite to the hearings knowledgeable persons from the fields of water conservation and sustainability, and shall consider factors of availability, water quality, regional self-sufficiency, benefits for species and environment, the totality of life-cycle costs, including avoided costs, and short- and long-term employment and economic benefits.

(e) On or before February 1, 2001, and on or before each February 1 thereafter, the Metropolitan Water District of Southern California shall prepare and submit to the Legislature a report on its progress in achieving the goals of increased emphasis on cost-effective conservation, recycling, and groundwater recharge in accordance with this section, and any recommendations for actions with regard to policy or budget matters to facilitate the achievement of those goals.

(f) Nothing in this section shall diminish the authority of the Metropolitan Water District of Southern California pursuant to Section 25 or any other provision of this act, or otherwise affect the purposes of the Metropolitan Water District of Southern California as described in existing law.

SEC. 4. Section 130.7 is added to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), to read:

130.7. (a) The Metropolitan Water District of Southern California, in cooperation with the following entities, shall participate in considering programs of groundwater recharge and replenishment, watershed management, habitat restoration, and environmentally compatible community development utilizing the resource potential of the Los Angeles River, the San Gabriel River,

or other southern California rivers, including storm water runoff from these rivers:

(1) Member public agencies whose boundaries include any part of the Los Angeles River, the San Gabriel River, or any other river in southern California.

(2) The Water Replenishment District of Southern California.

(3) Local public water purveyors and other appropriate groundwater entities.

(4) The County of Los Angeles.

(5) The United States Army Corps of Engineers.

(b) Nothing in this section affects the powers and purposes of the Water Replenishment District of Southern California or any other groundwater management entity, the County of Los Angeles, local public water purveyors, or the United States Army Corps of Engineers.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 416

An act to amend Sections 402 and 12174 of the Government Code, relating to state government.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 402 of the Government Code is amended to read:

402. (a) Every person who maliciously or for commercial purposes uses or allows to be used any reproduction or facsimile of the Great Seal of the State in any manner whatsoever is guilty of a misdemeanor.

(b) Notwithstanding subdivision (a), the Great Seal of the State may be used for commercial purposes by the Golden State Museum Store located at 1020 O Street in Sacramento, and by the Capitol Bookstore and Gift Shop located in the rotunda of the restored State Capitol Building.

(c) Notwithstanding subdivision (a), the California Sesquicentennial Commission may enter into an agreement to use the Great Seal of the State for officially sanctioned products of the California Sesquicentennial celebration as approved by the commission. The funds received from these sales shall revert to the California Sesquicentennial Foundation and be used only for official Sesquicentennial celebration purposes.

SEC. 2. Section 12174 of the Government Code is amended to read:

12174. (a) The Secretary of State shall administer, protect, develop, and interpret the Secretary of State and State Archives Building Complex located in Sacramento in the area bounded by 10th, 11th, O, and P Streets as authorized by Section 12235 for the use, education, and enjoyment of the public.

(b) The Secretary of State may enter into an operating agreement with the Golden State Museum Public Benefit Corporation (GSMPBC), formerly known as the California Archives Foundation, an existing California nonprofit public benefit corporation, tax exempt under Section 501(c)(3) of the United States Internal Revenue Code. Under the operating agreement with the Secretary of State (including the State Archives), the GSMPBC shall operate the Golden State Museum (the museum), including development, administration, interpretation, and management of the museum and related public services, and acquiring and managing funding for the museum's programs and services. Secondarily, the GSMPBC may support the programs and operations of the State Archives.

(c) Employees, volunteers, docents, members, or others working with or for the nonprofit tax-exempt organization described in subdivision (b) for purposes consistent with the mission of the organization shall be considered volunteers under Sections 3118 and 3119 of this code and Section 3363.5 of the Labor Code.

(d) The Board of Trustees of the GSMPBC shall include the Secretary of State or any Assistant Secretary of State designated by the Secretary of State and the Chairperson of the California Heritage Preservation Commission as ex officio voting members of the board. The Board of Trustees of the GSMPBC shall be the governing authority for operations funded through moneys received by the GSMPBC. The Board of Trustees of the GSMPBC shall submit an audit report annually to the Secretary of State. The board shall submit copies of annual audit reports to the Director of Finance, the Chair of the Joint Legislative Audit Committee, and the Chair of the Joint Legislative Budget Committee. No funds raised or assets acquired by the GSMPBC shall be used for purposes inconsistent with support of the Golden State Museum and the State Archives.

(e) No later than January 10 of each year, the GSMPBC shall submit the GSMPBC business plan for the following fiscal year to the Director of Finance and the Chair of the Joint Legislative Budget Committee for review and comment. The Executive Director of the

GSMPBC shall also submit, not less than 30 days prior to adoption by the GSMPBC's Board of Trustees, any proposed formal amendments to the GSMPBC business plan to the Director of Finance and the Chair of the Joint Legislative Budget Committee for review and comment.

(f) Fees charged to members of the public for copying, reproduction, and other services provided by the State Archives shall be at a level consistent with the costs of providing these services. The Secretary of State may establish an agreement with the GSMPBC to provide these services and collect moneys for providing these services.

CHAPTER 417

An act to amend Section 355.1 of the Welfare and Institutions Code, relating to child abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. The Legislature finds that children of the State of California are placed at risk when permitted contact with a parent or caretaker who has committed a sex crime. Further, the Legislature finds that children subject to juvenile court dependency jurisdiction based on allegations of molestation are in need of protection from those persons. Therefore, the purpose of this act is to ensure that information regarding those acts is appropriately considered by the juvenile court in determining whether a child is in need of juvenile court dependency protection.

SEC. 2. Section 355.1 of the Welfare and Institutions Code is amended to read:

355.1. (a) Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor is of a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has the care or custody of the minor, that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of Section 300.

(b) Proof that either parent, the guardian, or other person who has the care or custody of a minor who is the subject of a petition filed under Section 300 has physically abused, neglected, or cruelly treated another minor shall be admissible in evidence.

(c) The presumption created by subdivision (a) constitutes a presumption affecting the burden of producing evidence.

(d) Where the court finds that either a parent, a guardian, or any other person who resides with, or has the care or custody of, a minor who is currently the subject of the petition filed under Section 300 (1) has been previously convicted of sexual abuse as defined in Section 11165.1 of the Penal Code, (2) has been previously convicted of an act in another state that would constitute sexual abuse as defined in Section 11165.1 of the Penal Code if committed in this state, (3) has been found in a prior dependency hearing or similar proceeding in the corresponding court of another state to have committed an act of sexual abuse, or (4) is required, as the result of a felony conviction, to register as a sex offender pursuant to Section 290 of the Penal Code, that finding shall be prima facie evidence in any proceeding that the subject minor is a person described by subdivision (a), (b), (c), or (d) of Section 300 and is at substantial risk of abuse or neglect. The prima facie evidence constitutes a presumption affecting the burden of producing evidence.

(e) Where the court believes that a child has suffered criminal abuse or neglect, the court may direct a representative of the child protective agency to take action pursuant to subdivision (i) of Section 11166 of the Penal Code.

(f) Testimony by a parent, guardian, or other person who has the care or custody of the minor made the subject of a proceeding under Section 300 shall not be admissible as evidence in any other action or proceeding.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide additional protection to children who are or may become subject to dependency court jurisdiction based on allegations of molestation or sexual abuse, it is necessary that this act take effect immediately.

CHAPTER 418

An act to add Section 4857 to the Business and Professions Code, and to amend Section 121690 of the Health and Safety Code, relating to veterinary medicine.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 4857 is added to the Business and Professions Code, to read:

4857. (a) A veterinarian licensed under the provisions of this chapter shall not disclose any information concerning an animal receiving veterinary services, the client responsible for the animal receiving veterinary services, or the veterinary care provided to an animal, except under any one of the following circumstances:

(1) Upon written or witnessed oral authorization by knowing and informed consent of the client responsible for the animal receiving services or an authorized agent of the client.

(2) Upon authorization received by electronic transmission when originated by the client responsible for the animal receiving services or an authorized agent of the client.

(3) In response to a valid court order or subpoena.

(4) As may be required to ensure compliance with any federal, state, county, or city laws or regulations.

(5) Nothing in this section is intended to prevent the sharing of veterinary medical information between veterinarians or facilities for the purpose of diagnosis or treatment of the animal who is the subject of the medical records.

(6) As otherwise provided in this section.

(b) This section shall not apply to the extent that the client responsible for an animal or an authorized agent of the client responsible for the animal has filed or caused to be filed a civil or criminal complaint that places the veterinarian's care and treatment of the animal or the nature and extent of the injuries to the animal at issue , or when the veterinarian is acting to comply with federal , state, county, or city laws or regulations.

(c) A veterinarian shall be subject to the criminal penalties set forth in Section 4831 or any other provision of this code for a violation of this section. In addition, any veterinarian who negligently releases confidential information shall be liable in a civil action for any damages caused by the release of that information.

(d) Nothing in this section is intended to prevent the sharing of veterinary medical information between veterinarians and peace officers, humane society officers, or animal control officers who are acting to protect the welfare of animals.

SEC. 2. Section 121690 of the Health and Safety Code is amended to read:

121690. In rabies areas, all of the following shall apply:

(a) Every dog owner, after his or her dog attains the age of four months, shall no less than once every two years secure a license for the dog as provided by ordinance of the responsible city, city and county, or county. License fees shall be fixed by the responsible city, city and county, or county, at an amount not to exceed limitations

otherwise prescribed by state law or city, city and county, or county charter.

(b) Every dog owner, after his or her dog attains the age of four months, shall, at intervals of time not more often than once a year, as may be prescribed by the department, procure its vaccination by a licensed veterinarian with a canine antirabies vaccine approved by, and in a manner prescribed by, the department.

(c) All dogs under four months of age shall be confined to the premises of, or kept under physical restraint by, the owner, keeper, or harborer. Nothing in this chapter and Section 120435 shall be construed to prevent the sale or transportation of a puppy four months old or younger.

(d) Any dog in violation of this chapter and any additional provisions that may be prescribed by any local governing body shall be impounded, as provided by local ordinance.

(e) It shall be the duty of the governing body of each city, city and county, or county to maintain or provide for the maintenance of a pound system and a rabies control program for the purpose of carrying out and enforcing this section.

(f) It shall be the responsibility of each city, county, or city and county to provide dog vaccination clinics, or to arrange for dog vaccination at clinics operated by veterinary groups or associations, held at strategic locations throughout each city, city and county, or county. The vaccination and licensing procedures may be combined as a single operation in the clinics. No charge in excess of the actual cost shall be made for any one vaccination at a clinic. No owner of a dog shall be required to have his or her dog vaccinated at a public clinic if the owner elects to have the dog vaccinated by a licensed veterinarian of the owner's choice.

All public clinics shall be required to operate under antiseptic immunization conditions comparable to those used in the vaccination of human beings.

(g) In addition to the authority provided in subdivision (a), the ordinance of the responsible city, city and county, or county may provide for the issuance of a license for a period not to exceed three years for dogs that have attained the age of 12 months or older and have been vaccinated against rabies. The person to whom the license is issued pursuant to this subdivision may choose a license period as established by the governing body 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. A dog owner who complies with this subdivision shall be deemed to have complied with the requirements of subdivision (a).

(h) All information obtained from a dog owner by compliance with this chapter is confidential to the dog owner and proprietary to the veterinarian. This information shall not be used, distributed, or

released for any purpose, except to ensure compliance with existing federal, state, county, or city laws or regulations.

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.

CHAPTER 419

An act to amend Sections 33500, 33501, 33502, 33503, 33601, 33700, and 33702 of the Public Resources Code, relating to conservation.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 33500 of the Public Resources Code is amended to read:

33500. The Legislature hereby finds and declares that the mountains and natural community conservation lands of the Coachella Valley in Riverside County contain unique and important open-space, wildlife, scenic, environmental, anthropological, cultural, scientific, educational, and recreational resources that should be held in trust for the enjoyment of, and appreciation by, present and future generations.

SEC. 2. Section 33501 of the Public Resources Code is amended to read:

33501. The Coachella Valley Mountains Conservancy is hereby created as a state agency within the Resources Agency to acquire and hold, in perpetual open space, mountainous lands surrounding the Coachella Valley and natural community conservation lands within the Coachella Valley, and to provide for the protection of wildlife resources on, and the public's enjoyment of, and the enhancement of their recreational and educational experiences on, those lands in a manner consistent with the protection of the lands and the resource values specified in Section 33500.

SEC. 3. Section 33502 of the Public Resources Code is amended to read:

33502. (a) The territory of the conservancy consists of that portion of Riverside County bounded by a line commencing at the intersection of the highest elevation of the San Jacinto Mountains and the range line common to Range 2 East and Range 3 East, S.B.M., in

the vicinity of the western limits of the Sonoran Desert; thence north along that range line to its intersection with the San Bernardino-Riverside County boundary, thence east along the San Bernardino-Riverside County boundary to its intersection with the highest elevation of the Little San Bernardino Mountains; thence meandering southeast and east along the points of highest elevation of the Little San Bernardino Mountains, the Cottonwood Mountains, and the Eagle Mountains to the point of intersection with the range line common to Range 12 East and Range 13 East, S.B.M.; thence south along that range line to its intersection with the township line common to Township 5 South and Township 6 South, S.B.M.; thence east along that township line to its intersection with the range line common to Range 13 East and Range 14 East, S.B.M.; thence south along that range line to its intersection with the boundary of the Chocolate Mountains Aerial Gunnery Range; thence west and south along the boundary of the Chocolate Mountains Aerial Gunnery Range to its intersection with the Imperial-Riverside County boundary; thence west along the Imperial-Riverside County boundary to its intersection with the highest elevation of the Santa Rosa Mountains; thence meandering northwest and north along the points of highest elevation of the Santa Rosa and San Jacinto Mountains to the point of beginning; and as more specifically set forth in that certain map entitled "Coachella Valley Mountains Conservancy" and dated _____ 1999, and placed on file with the Secretary of State, which map is incorporated in this subdivision by this reference.

(b) The governing board of the conservancy may adjust the boundary delineating the territory of the conservancy, but not by more than 500 yards from the boundary as mapped pursuant to subdivision (a), to embrace within the conservancy adjacent lands that have any of the resource values specified in Section 33500. Any adjustment in the boundary shall be reflected in a revision to the map specified in subdivision (a), which revision shall be promptly filed with the Secretary of State.

SEC. 4. Section 33503 of the Public Resources Code is amended to read:

33503. (a) The governing board of the conservancy consists of the following 21 voting members:

(1) The mayor or a member of the city council of each of the Cities of Cathedral City, Desert Hot Springs, Indian Wells, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage, appointed by a majority of the membership of the respective city council of each city.

(2) The Chairperson of the Tribal Council of the Agua Caliente Band of Cahuilla Indians.

(3) Two members of the Board of Supervisors of the County of Riverside, appointed by a majority of the membership of the board of supervisors.

(4) Three members chosen from the general public who reside within the conservancy's territory, one of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, and one of whom shall be appointed by the Speaker of the Assembly.

(5) The Secretary of the Resources Agency.

(6) The Director of Fish and Game.

(7) The Executive Director of the Wildlife Conservation Board.

(8) The Director of Parks and Recreation.

(9) The Vice President, Division of Agriculture and Natural Resources, of the University of California.

(10) The State Director for California of the United States Bureau of Land Management.

(11) The Regional Forester for the Pacific Southwest Region of the United States Forest Service.

(12) The Regional Director for the Pacific West Region of the National Park Service.

(b) Any state or federal official who is a member of the governing board and whose principal office is not within the territory of the conservancy may designate a member of his or her executive staff to vote on his or her behalf and otherwise discharge the duties of the member when the member is not in attendance. Notice of any such designation shall be promptly communicated in writing to the chairperson of the conservancy.

(c) Each city council, the Tribal Council of the Agua Caliente Band of Cahuilla Indians, and the Board of Supervisors of the County of Riverside may appoint an alternate member from its respective entity to attend the governing board meetings and vote on behalf of the appointed member and otherwise discharge the duties of the member when that member is not in attendance. Notice of the designation shall be promptly communicated in writing to the chairperson of the conservancy.

SEC. 5. Section 33601 of the Public Resources Code is amended to read:

33601. The conservancy may do all of the following:

(a) Sue and be sued.

(b) Determine the qualifications of, recommend the salary of, and appoint, an executive director who shall be exempt from civil service and serve at the pleasure of the conservancy. In addition, the conservancy may employ other staff pursuant to the State Civil Service Act and as may be authorized in the annual state Budget Act.

(c) Enter into contracts pursuant to Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, for services requiring knowledge, experience, and ability not possessed by the conservancy's staff.

(d) Enter into other agreements with public agencies, private entities, and persons necessary for the proper discharge of the conservancy's duties.

(e) In order to further the conservancy's purposes as set forth in Section 33501, award grants to cities, counties, resource conservation districts, or nonprofit organizations that are described in paragraph (2) of subdivision (f) of Section 33702 and that are qualified as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 501(c)(3)).

SEC. 6. Section 33700 of the Public Resources Code is amended to read:

33700. (a) As used in this chapter, "mountainous lands" means all lands, irrespective of their angle of slope or other natural or manmade terrain features, within the territory of the conservancy that lie above the floor of the Coachella Valley, if there is no alluvial fan, or that lie above any alluvial fan extending onto the valley floor, as more specifically set forth in that certain map entitled "Coachella Valley Mountainous Lands Map" and dated _____ ____, 1999, and placed on file with the Secretary of State, which map is hereby incorporated in this subdivision by this reference. The map described in this subdivision may be combined with, and made a part of, the map described in Section 33502.

(b) The governing board of the conservancy may adjust the boundary delineating mountainous lands within the conservancy's territory, but not by more than 100 yards from the boundary mapped as specified in subdivision (a), to avoid bisecting any single lot or parcel in existence on January 1, 1991, or to conform the boundary to more readily identifiable natural or manmade features in existence on January 1, 1991, if the adjustment will not jeopardize any of the resource values specified in Section 33500. Any adjustment in the boundary shall be reflected in a revision to the map specified in subdivision (a), which revision shall be promptly filed with the Secretary of State.

(c) In the event of any inconsistency between the definition of "mountainous lands," as set forth in this section, and the map described in this section, the definition shall control.

(d) As used in this chapter, "natural community conservation lands" means all lands within the territory of the conservancy, the preservation of which is necessary to implement a natural community conservation plan that has been approved by the Department of Fish and Game pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

SEC. 7. Section 33702 of the Public Resources Code is amended to read:

33702. (a) Except as provided in subdivisions (b) and (c), the acquisition of real property or interests in real property under this division is subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(b) Any acquisition of real property or any interest in real property within the territory of the conservancy that is located in an

area designated as a National Scenic Area and that has a value of less than two hundred fifty thousand dollars ($250,000), is not subject to the Property Acquisition Law.

(c) Any acquisition of real property from the County of Riverside that was acquired by the county as a result of the nonpayment of taxes, and that has a value of less than two hundred fifty thousand dollars ($250,000), is not subject to the Property Acquisition Law if the Administrative Secretary of the State Public Works Board has received written notice that the conservancy has adopted a resolution requesting that the real property be removed from public sale and the Director of Finance has not, within 60 days from the date that the written notice was received, notified the executive director of the conservancy that the real property must be acquired under the Property Acquisition Law.

(d) The committee that is responsible for developing the Coachella Valley natural community conservation plan as of December 31, 1999, or any subsequent committee that is responsible for overseeing the implementation of any state-approved Coachella Valley natural community conservation plan, habitat conservation plan, or similar program, shall be the advisory committee to the conservancy in its implementation of any aspect of the plan or program. Prior to the acquisition of property or the taking of other actions in furtherance of the plan or program, the conservancy shall consult with the advisory committee.

(e) Except as provided in Section 33701, and subject to Section 33507, the conservancy may acquire any property, and any interest in property, on behalf of itself or a state agency represented on the governing board, within its territory if acquisition of the property is in furtherance of the conservancy's purposes, as set forth in Section 33501. The conservancy may initiate, negotiate, and participate in agreements with local, state, and federal public agencies or nonprofit entities for the management of land under the conservancy's ownership or control, in furtherance of the conservancy's purposes. The conservancy may also hold, manage, maintain, administer, occupy, and care for that property in the event that no appropriate public or private entity is available to undertake that responsibility without cost to the conservancy.

(f) (1) Except as provided in paragraph (2), the conservancy shall not sell, exchange, lease, or otherwise dispose of or encumber, any mountainous lands or natural community conservation lands unless authorized by a four-fifths vote of the governing board or a two-thirds vote of the electors residing within the conservancy.

(2) The conservancy may transfer any mountainous lands or natural community conservation lands to another public agency or to any nonprofit organization that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historic, agricultural, forested, or open-space condition or use, if the transfer is authorized in the presence of a quorum and upon the

recorded votes of a majority of the voting members of the governing board, and if the transferee agrees to hold, manage, maintain, administer, occupy, and care for the property in perpetuity and in furtherance of the conservancy's purposes, as set forth in Section 33501.

(3) Any lease entered into pursuant to this subdivision shall not exceed five years and shall include the express provision that the lease may be terminated at any time that the governing board determines that the land is needed for conservancy purposes.

(g) Notwithstanding subdivision (e) and the requirements specified in subdivision (f), the conservancy may sell, exchange, lease, or otherwise dispose of or encumber, property that is not mountainous land or natural community conservation land on any terms that are in the best interests of the conservancy.

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.

CHAPTER 420

An act to add Section 25141.6 to, and to repeal Section 25170.5 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 25141.6 is added to the Health and Safety Code, to read:

25141.6. In any case where the department proposes to make a determination that a waste meets one or more of the criteria and guidelines for the identification of hazardous wastes adopted pursuant to Section 25141, but that it is not necessary to manage the waste as a hazardous waste because the waste possesses mitigating physical and chemical characteristics that render it insignificant as a hazard to human health, safety, or the environment, the department shall issue a public notice of that proposed determination. The public notice shall be electronically posted on the department's Internet home page at least 30 days before the determination becomes final and shall also be sent to all of the following:

(a) The Chairperson of the California Environmental Policy Council.

(b) The California Integrated Waste Management Board.

(c) The State Water Resources Control Board.

(d) Any person who requests the public notice.

(e) Any solid waste enforcement agency or California regional water quality control board, the jurisdiction of which the department knows will be affected by the determination.

SEC. 2. Section 25170.5 of the Health and Safety Code is repealed.

CHAPTER 421

An act to amend Sections 20002 and 23113 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 20002 of the Vehicle Code is amended to read:

20002. (a) The driver of any vehicle involved in an accident resulting only in damage to any property, including vehicles, may move the vehicle, if possible, off the main lanes of the highway to a safe location within the immediate vicinity of the accident unless that action would create a traffic hazard or cause an injury to any person. Moving the vehicle in accordance with this subdivision does not affect the question of fault. The driver shall also do either of the following:

(1) Locate and notify the owner or person in charge of that property of the name and address of the driver and owner of the vehicle involved and, upon locating the driver of any other vehicle involved or the owner or person in charge of any damaged property, upon being requested, present his or her driver's license, and vehicle registration, to the other driver, property owner, or person in charge of that property. The information presented shall include the current residence address of the driver and of the registered owner. If the registered owner of an involved vehicle is present at the scene, he or she shall also, upon request, present his or her driver's license information, if available, or other valid identification to the other involved parties.

(2) Leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the

collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol.

(b) Any person who parks a vehicle which, prior to the vehicle again being driven, becomes a runaway vehicle and is involved in an accident resulting in damage to any property, attended or unattended, shall comply with the requirements of this section relating to notification and reporting and shall, upon conviction thereof, be liable to the penalties of this section for failure to comply with the requirements.

(c) Any person failing to comply with all the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 2. Section 23113 of the Vehicle Code is amended to read:

23113. (a) Any person who drops, dumps, deposits, places, or throws, or causes or permits to be dropped, dumped, deposited, placed, or thrown, upon any highway or street any material described in Section 23112 or in subdivision (d) of Section 23114 shall immediately remove the material or cause the material to be removed.

(b) If the person fails to comply with subdivision (a), the governmental agency responsible for the maintenance of the street or highway on which the material has been deposited may remove the material and collect, by civil action, if necessary, the actual cost of the removal operation in addition to any other damages authorized by law from the person made responsible under subdivision (a).

(c) A member of the Department of the California Highway Patrol may direct a responsible party to remove the aggregate material described in subdivision (d) of Section 23114 from a highway when that material has escaped or been released from a vehicle.

(d) Notwithstanding any other provision of law, a government agency described in subdivision (b), the Department of the California Highway Patrol, or the employees or officers of those agencies, may not be held liable for any damage to material, to cargo, or to personal property caused by a negligent act or omission of the employee or officer when the employee or officer is acting within the scope and purpose of subdivision (b) or (c). Nothing in this subdivision affects liability for purposes of establishing gross negligence or willful misconduct. This subdivision applies to the negligent performance of a ministerial act, and does not affect liability under any provision of law, including liability, if any, derived from the failure to preserve evidence in a civil or criminal action.

CHAPTER 422

An act to amend Section 29725 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 29725 of the Public Resources Code is amended to read:

29725. "Local government" means the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities of Sacramento, Stockton, Tracy, Antioch, Pittsburg, Isleton, Lathrop, Brentwood, Rio Vista, West Sacramento, and Oakley, and any other cities that may be incorporated in the future in the primary zone.

CHAPTER 423

An act to add Sections 1747.06 and 1747.9 to the Civil Code, relating to credit cards.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 1747.06 is added to the Civil Code, to read:

1747.06. (a) A credit card issuer that mails an offer or solicitation to receive a credit card and, in response, receives a completed application for a credit card that lists an address that is different from the address on the offer or solicitation shall verify the change of address by contacting the person to whom the solicitation or offer was mailed.

(b) Notwithstanding any other provision of law, a person to whom an offer or solicitation to receive a credit card is made shall not be liable for the unauthorized use of a credit card issued in response to that offer or solicitation if the credit card issuer does not verify the change of address pursuant to subdivision (a) prior to the issuance of the credit card, unless the credit card issuer proves that this person actually incurred the charge on the credit card.

(c) When a credit card issuer receives a written or oral request for a change of the cardholder's billing address and then receives a written or oral request for an additional credit card within 10 days after the requested address change, the credit card issuer shall not mail the requested additional credit card to the new address or,

alternatively, activate the requested additional credit card, unless the credit card issuer has verified the change of address.

(d) This section shall become operative on July 1, 2000.

SEC. 2. Section 1747.9 is added to the Civil Code, to read:

1747.9. (a) Except as provided in this section, no person, firm, partnership, association, corporation, or limited liability company that accepts credit cards for the transaction of business shall print more than the last five digits of the credit card account number or the expiration date upon any receipt provided to the cardholder.

(b) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the person's credit card number is by handwriting or by an imprint or copy of the credit card.

(c) This section shall become operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is in use before January 1, 2001.

(d) This section shall become operative on January 1, 2001, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is first put into use on or after January 1, 2001.

CHAPTER 424

An act to amend Sections 2340, 2341, and 2342 of, and to add Section 15604 to, the Probate Code, relating to trusts.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 15604 is added to the Probate Code, to read:

15604. (a) Notwithstanding any other provision of law, a nonprofit charitable corporation may be appointed as trustee of a trust created pursuant to this division, if all of the following conditions are met:

(1) The corporation is incorporated in this state.

(2) The articles of incorporation specifically authorize the corporation to accept appointments as trustee.

(3) For the three years prior to the filing of a petition under this section, the nonprofit charitable corporation has been exempt from payment of income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code and has served as a private professional conservator in the state.

(4) The settlor or an existing trustee consents to the appointment of the nonprofit corporation as trustee or successor trustee, either in

the petition or in a writing signed either before or after the petition is filed.

(5) The court determines the trust to be in the best interest of the settlor.

(6) The court determines that the appointment of the nonprofit corporation as trustee is in the best interest of the settlor and the trust estate.

(b) A petition for appointment of a nonprofit corporation as trustee under this section may be filed by any of the following:

(1) The settlor or the spouse of the settlor.

(2) The nonprofit charitable corporation.

(3) An existing trustee.

(c) The petition shall include in the caption the name of a responsible corporate officer who shall act for the corporation for purposes of this section. If, for any reason, the officer so named ceases to act as the responsible corporate officer for purposes of this section, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

(d) The petition shall request that a trustee be appointed for the estate, shall specify the name, address, and telephone number of the proposed trustee and the name, address, and telephone number of the settlor or proposed settlor, and state the reasons why the appointment of the trustee is necessary.

(e) The petition shall set forth, so far as the information is known to the petitioner, the names and addresses of all persons entitled to notice of a conservatorship petition, as specified in subdivision (b) of Section 1821.

(f) Notice of the hearing on the petition shall be given in the same manner as provided in Sections 1822 and 1824.

(g) The trustee appointed by the court pursuant to this section shall do all of the following:

(1) File the required bond for the benefit of the trust estate in the same manner provided for conservators of the estate as set forth in Section 2320. This bond may not be waived, but the court may, in its discretion, permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

(2) Comply with the requirements for registration and filing of annual statements pursuant to Article 4 (commencing with Section 2340) of Chapter 4 of Part 4 of Division 4.

(3) File with the court inventories and appraisals of the trust estate and present its accounts of the trust estate in the manner provided for conservators of the estate set forth in Chapter 7 (commencing with Section 2600) of Part 4 of Division 4.

(4) Be reimbursed for expenses and compensated as trustee in the manner provided for conservators of the estate as described in Chapter 8 (commencing with Section 2640) of Part 4 of Division 4. However, compensation as trustee appointed under this section shall

be allowed only for services actually rendered and shall not be based on the value of the estate.

(5) Be represented by counsel in all proceedings before the court. Any fee allowed for an attorney for the nonprofit charitable corporation shall be for services actually rendered and shall not be based on the value of the estate.

(h) The trustee appointed by the court under this section may be removed by the court, or may resign in accordance with Chapter 9 (commencing with Section 2650) of Part 4 of Division 4. If the nonprofit charitable corporation resigns or is removed by the court, the settlor may appoint another person as successor trustee, or another nonprofit charitable corporation as trustee under this section.

(i) The trustee appointed by the court under this section is bound by the trust instrument created by the settlor, and shall be subject to the duties and responsibilities of a trustee as provided in this code.

SEC. 2. Section 2340 of the Probate Code is amended to read:

2340. (a) No superior court may appoint a private professional conservator or private professional guardian, or permit any person to continue to serve as a private professional conservator or private professional guardian, pursuant to Chapter 5 (commencing with Section 2350) or Chapter 6 (commencing with Section 2400) unless the conservator or guardian has filed the information required by Sections 2342 and 2343 with the county clerk in each county where a petition for appointment has been filed.

(b) No superior court may appoint a private professional trustee unless the trustee has filed the information required by Sections 2342 and 2343 with the county clerk in each county where a petition for appointment has been filed.

SEC. 3. Section 2341 of the Probate Code is amended to read:

2341. (a) As used in this article, "private professional conservator" means a person or entity appointed as conservator of the person or estate, or both, of two or more conservatees at the same time who are not related to the conservator by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a conservator shall comply with this article. The court may, at its discretion, require any person who is the conservator for only one conservatee not related to the conservator by blood or marriage to comply with this article, and in that case, references in this article to a "private professional conservator" includes those persons.

(b) As used in this article, "private professional guardian" means a person or entity appointed as guardian of the person or estate, or both, of two or more wards at the same time who are not related to the guardian by blood or marriage, except a bank or other entity

authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a guardian shall comply with this article. The court may, at its discretion, require any person who is the guardian for only one ward not related to the guardian by blood or marriage to comply with this article, and in that case, references in this article to a "private professional guardian" includes those persons.

(c) As used in this article, "private professional trustee" means a nonprofit charitable corporation appointed as trustee pursuant to Section 15604.

SEC. 4. Section 2342 of the Probate Code is amended to read:

2342. (a) All private professional conservators, private professional guardians, and private professional trustees shall file annually with the county clerk a statement, under penalty of perjury, containing the following information:

(1) His or her educational background and professional experience.

(2) At least three professional references.

(3) The names of the conservator's or guardian's current conservatees or the trusts currently administered by the trustee.

(4) The aggregate dollar value of all assets currently under the conservator's, guardian's, or trustee's supervision.

(5) The conservator's, guardian's, or trustee's addresses and telephone numbers for his or her place of business and place of residence.

(6) Whether the conservator, guardian, or trustee has ever been removed for cause as conservator or guardian or trustee or has resigned as conservator or guardian or trustee in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers.

(7) The case names, court locations, and case numbers of all conservatorship, guardianship, or trust cases which are closed for which the private professional conservator, private professional guardian, or private professional trustee served as the conservator, guardian, or trustee.

(b) Upon filing of a petition for appointment, a private professional conservator, private professional guardian, and private professional trustee shall state that he or she is a private professional conservator or private professional guardian or private professional trustee, and that the information required by this section is on file with the county clerk.

(c) The county clerk shall order a background fingerprint check from the Department of Justice and may request a background fingerprint check from the Federal Bureau of Investigation on each private professional conservator, private professional guardian, or private professional trustee. The background check shall include a

record of all arrests resulting in conviction and all arrests for which final disposition is pending. The Department of Justice shall retain these fingerprints in its files and shall provide any subsequent arrest information to the county clerk pursuant to Section 11105.2 of the Penal Code until notified by the county clerk that the person is no longer serving in the capacity of a private professional conservator , private professional guardian, or private professional trustee. The superior court shall review the background fingerprint check prior to the appointment of a private professional conservator , private professional guardian, or private professional trustee. The court shall review annual updates to the criminal background check on persons currently serving in the capacity of a private professional conservator , private professional guardian, or private professional trustee under the court's jurisdiction. The background fingerprint check may be dispensed with by the court if the petitioner was appointed as a private professional conservator , private professional guardian, or private professional trustee, or served in the capacity of a private professional conservator , private professional guardian, or private professional trustee, during the previous year and a background fingerprint check was previously made.

(d) The information required by this section shall be made available to the court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the conservator or guardian or trustee, but shall otherwise be kept confidential.

(e) This section applies to all private professional conservators, private professional guardians, and private professional trustees regardless of the date of appointment.

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.

CHAPTER 425

An act to add and repeal Article 3.7 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, relating to defense conversion.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Article 3.7 (commencing with Section 15346) is added to Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 3.7. California Defense Retention and Conversion Act of 1999

15346. This article shall be known and may be cited as the California Defense Retention and Conversion Act of 1999.

15346.1. The Legislature finds and declares as follows:

(a) For over half a century, California's industries, universities, businesses, and workers have contributed to our nation's defense, utilizing their capital, talents, and skills to develop and bring to production important new technologies and advanced weapons systems, aircraft, and missiles.

(b) Defense spending in California peaked at sixty billion dollars ($60,000,000,000) in 1988. Since then, it has decreased by 16 percent with the resulting loss of 126,000 jobs. The Commission on State Finance projected a further 22 percent reduction to thirty-seven billion dollars ($37,000,000,000) in 1997, with a loss of another 81,000 jobs. California is expected to experience the most severe impact of defense cuts since 1994.

(c) California has experienced four rounds of base closures resulting in the closure or realignment of 29 bases since 1988. Additional bases may be considered for closure in future closure rounds.

(d) California lost more federal payroll jobs from its 29 military base closures under rounds one to four, inclusive, than all of the rest of the states put together. The reduced military payroll, including military and civilian employees, in California is approximately 101,000 jobs. About 300,000 private sector defense industry jobs in California have been lost.

(e) California needs a focused, coordinated defense retention and conversion program within the state in order to protect the existing defense installations and facilities within the state and to assist those communities that have experienced an installation's closing.

(f) Currently, there are over 300,000 active duty and civilian defense personnel in California.

(g) The direct Department of Defense expenditures in California are over thirty billion dollars ($30,000,000,000) for employees, contracts, and capital investment.

(h) California has over 36 major and 25 minor active military installations.

(i) The Department of Defense pays ten million dollars ($10,000,000) annually in fees, permits, and licenses within the state.

(j) Having been the leader in the nation's defense effort, the state must now also assume the role as leader in defending existing military installations within its borders. That role will require a coordinated effort to ensure that California promotes the necessity of existing defense facilities, assist local governments and organizations in planning retention efforts, and design and implement a single unified plan for active defense retention efforts on the federal level.

(k) It is the intent of the Legislature that the state's role in defense retention, conversion, and military base reuse be consolidated in the Trade and Commerce Agency.

15346.2. The Legislature recognizes the potential for federal legislation to close additional military installations nationwide. In an effort to be proactive in retaining these facilities within California that are necessary for the defense of the nation and to provide for a single, focused defense of these installations, the California Defense Retention and Conversion Council is hereby created in the Trade and Commerce Agency.

15346.3. The California Defense Retention and Conversion Council shall consist of the following members, who shall be appointed as follows:

(a) The Governor shall have 11 appointees, who may include, but are not limited to, the following:

(1) The Secretary of Trade and Commerce, or his or her designee.

(2) The Secretary of Environmental Protection, or his or her designee.

(3) The Director of Employment Development, or his or her designee.

(4) The Director of Planning and Research, or his or her designee.

(5) The Director of the Energy Resources, Conservation and Development Commission, or his or her designee.

(6) The Director of Transportation, or his or her designee.

(7) The Director of the Employment Training Panel, or his or her designee.

(8) The Secretary of Resources, or his or her designee.

(9) A member who is an elected public official from local government representing a community with an active defense installation.

(10) A member who is an elected public official from local government representing a community with a closed defense installation.

(11) A public member selected at large.

(b) The Speaker of the Assembly shall have two appointees who may include, but are not limited to, members representing labor, business, or local government.

(c) The Senate Committee on Rules shall have two appointees who may include, but are not limited to, members representing labor, business, or local government.

(d) Nonvoting members, to consist of all of the following:

(1) At his or her option, the President of the University of California, or his or her designee.

(2) The Chancellor of the California State University, or his or her designee.

(3) The Chancellor of the California Community Colleges, or his or her designee.

(4) The Speaker of the Assembly, or his or her designee.

(5) The President pro Tempore of the Senate, or his or her designee.

(6) A representative from each branch of the United States Armed Forces within California, appointed by the Governor.

15346.4. (a) The members of the council shall elect a member to be the chairperson of the council.

(b) The Office of Military Base Retention shall provide staff support to the council.

(c) It shall be the purpose of the council to provide a central clearinghouse for all defense retention, conversion, and base reuse activities in the state.

15346.5. The council shall do all of the following:

(a) Develop and recommend to the Governor and the Legislature a strategic plan for state and local defense retention and conversion efforts. The plan shall address the state's role in assisting communities with potential base closures and those impacted by previous closures. The council may coordinate with other state agencies, local groups, and interested organizations on this strategic plan to retain current Department of Defense installations, facilities, bases, and related civilian activities. The opportunity shall be provided for public review and comments on the strategic plan prior to submission to the Governor and the Legislature. Notwithstanding Section 7550.5, the plan shall be submitted to the Governor and the Legislature on or before December 1, 2000.

(b) Conduct outreach to entities and parties involved in defense retention and conversion across the state and provide a network to facilitate assistance and coordination for all defense retention and conversion activities within the state.

(c) Help develop and coordinate state retention advocacy efforts on the federal level.

(d) (1) Conduct an evaluation of existing state retention and conversion programs and provide the Legislature recommendations on the continuation of existing programs, including, but not limited to, the possible elimination or alteration of those programs. Notwithstanding Section 7550.5, this evaluation shall be transmitted to the Legislature on or before November 1, 2000, and again on or before November 1, 2003.

(2) The council may provide recommendations to the Legislature on the necessity of new programs for defense retention and adequate funding levels.

(e) Utilize and update the plan prepared by the Defense Conversion Council as it existed on December 31, 1998, to minimize California's loss of bases and jobs in future rounds of base closures. This plan shall include, but not be limited to, all of the following:

(1) Identification of major installations in California.

(2) Determination of how best to defend existing bases and base employment in this state.

(3) Coordination with communities that may face base closures.

(4) Development of data and analyses on bases in this state.

(5) Coordination with the congressional delegation, the Legislature, and the Governor. With the consent of the appropriate authority, the council may temporarily borrow technical, policy, and administrative staff from other state agencies, including the Legislature.

(f) Where funds and resources are available, the council may undertake all of the following activities:

(1) Provide a central clearinghouse for all base retention or conversion assistance activities, including, but not limited to, employee training programs and regulation review and permit streamlining.

(2) Provide technical assistance to communities with potential or existing base closure activities.

(3) Provide a central clearinghouse for all defense retention and conversion funding, regulations, and application procedures for federal or state grants.

(4) Serve as a central clearinghouse for input and information, including needs, issues, and recommendations from businesses, industry representatives, labor, local government, and communities relative to retention and conversion efforts.

(5) Identify available state and federal resources to assist businesses, workers, communities, and educational institutions that may have a stake in retention and conversion activities.

(6) Provide one-stop coordination, maintain and disseminate information, standardize state endorsement procedures, and develop fast-track review procedures for proposals seeking state funds to match federal defense conversion funding programs.

(7) Maintain and establish data bases in such fields as defense-related companies, industry organization proposals for the state and federal defense industry, community assistance, training, and base retention, and provide electronic access to the data bases.

15346.8. (a) The council shall meet at the times and in places it deems necessary, but no less than once a quarter. Whenever possible, meetings shall be held in Sacramento in state facilities.

(b) Under no circumstances shall the council permit absentee or proxy voting at any of its proceedings. However, a vote by a designee, as provided in paragraphs (1) to (8), inclusive, of subdivision (a), and paragraphs (1) to (5), inclusive, of subdivision (d), of Section 15346.3,

shall not be construed to be an absentee or proxy vote under this subdivision.

(c) Council members may receive reimbursement for travel costs directly related to council attendance if funding is available.

(d) The council shall apply for grants and may seek contributions from private industry to fund its operations.

(e) The council shall actively solicit and accept funds from industry, foundations, or other sources to promote and fund research and development of dual technologies, to identify alternative applications of military technologies, to initiate market research for identifying possible defense conversion products, to establish worker and business training programs, and to operate pilot projects to evaluate and demonstrate useful approaches. These efforts should be coordinated with the regional technology alliances.

15346.9. In addition to the duties specified in Section 15346.5, the council shall do all of the following:

(a) At the request of a council member, the council may review actions or programs by state agencies that may affect military base retention and reuse and offer comments or suggest changes to better integrate these actions or programs into the overall state strategic plan required pursuant to subdivision (a) of Section 15346.5.

(b) The council shall prepare a study considering strategies for the long-term protection of lands adjacent to military bases from development that would be incompatible with the continuing missions of those bases. The study shall include the effects of local land use encroachment, environmental impact considerations, and population growth issues. The study shall recommend basic criteria to assist local governments in identifying lands where incompatible development may adversely impact the long-term missions of these bases. The study shall also identify potential mechanisms, including recommendations for changes in law at the local or state level, to address these issues. In conducting this study, the council may use the Naval Air Station at Lemoore and Edwards Air Force Base as case studies.

The council shall hold public hearings on this study, including at least one in the vicinity of either Lemoore or Edwards. Notwithstanding Section 7550.5, the council shall prepare and submit to the Governor and the Legislature by November 30, 2000, a report on this study with any recommendations.

15346.10. The Trade and Commerce Agency, with input and assistance from the council, shall establish a Defense Retention Grant Program to grant funds to communities with military bases to assist them in developing a retention strategy. The agency may use grant criteria similar to those for existing defense conversion grant programs as a basis for developing the new grant program. To discourage multiple grant applications for individual defense installations in a region, the criteria shall be drafted to encourage a single application for grant funds to develop, where appropriate, a

single, regional defense retention strategy. The structure, requirements, administration, and funding procedures of the grant program shall be submitted to the Legislature for review at least 90 days prior to making the first grant disbursement. The agency may make no grant award without the local community providing at least 50 percent or more in matching funds or in-kind services.

15346.12. The Trade and Commerce Agency shall adopt regulations to implement the programs authorized in this chapter. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

15346.13. This chapter shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 426

An act to amend Section 1810.7 of the Insurance Code, and to add and repeal Article 5.5 (commencing with Section 1299) to Chapter 1 of Title 10 of Part 2 of the Penal Code, relating to bail enforcement.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 1810.7 of the Insurance Code is amended to read:

1810.7. (a) In order to be eligible to take the examination required to be licensed under this chapter, the applicant shall have completed not less than 12 hours of classroom education in subjects pertinent to the duties and responsibilities of a bail licensee, including, but not limited to, all laws and regulations related thereto, rights of the accused, ethics, and apprehension of bail fugitives. Additionally, a licensee shall complete annually not less than six hours of continuing classroom education in these subjects prior to renewal of his or her license. This continuing education requirement shall not include a written examination.

(b) The commissioner shall biennially approve or disapprove one or more statewide professional organizations or other providers

familiar with bail law to provide education for licensure as required by this section. The commissioner may, at any time, disapprove any provider who is not qualified or whose course outlines are not approved, who is not of good business reputation, or who is lacking in integrity, honesty, or competency. The commissioner shall biennially approve or disapprove the course outlines and schedule of classes to be provided.

(c) The statewide professional organization or other providers responsible for providing education for licensure under this chapter shall consult with the California State Sheriffs' Association, the California District Attorneys Association, the California Advisory Board of Surety Agents, and the California Bail Agents Association, prior to submission of the course outlines for approval by the commissioner. The bail license fee shall be increased, the amount of which shall be determined by the commissioner, which shall be deposited in the Insurance Fund for the purposes of recovering the administrative costs for meeting the conditions and purposes of this section. Providers of education or continuing education shall offer courses to all applicants at the same course fees.

(d) Any person who falsely represents to the commissioner that compliance with this section has been met shall be subject, after notice and hearing, to the penalties and fines set out in Section 1814.

(e) A licensee shall not be required to comply with the continuing education requirements of this section if the licensee submits proof satisfactory to the commissioner that he or she has been a licensee in good standing for 30 continuous years in this state and is 70 years of age or older.

(f) The commissioner may make reasonable rules and regulations necessary, advisable, and convenient for the administration and enforcement of this chapter.

SEC. 2. Article 5.5 (commencing with Section 1299) is added to Chapter 1 of Title 10 of Part 2 of the Penal Code, to read:

Article 5.5. Bail Fugitive Recovery Persons Act

1299. This article shall be known as the Bail Fugitive Recovery Persons Act.

1299.01. For purposes of this article, the following terms shall have the following meanings:

(a) "Bail fugitive" means a defendant in a pending criminal case who has been released from custody under a financially secured appearance, cash, or other bond and has had that bond declared forfeited, or a defendant in a pending criminal case who has violated a bond condition whereby apprehension and reincarceration are permitted.

(b) "Bail" means a person licensed by the Department of Insurance pursuant to Section 1800 of the Insurance Code.

(c) "Depositor of bail" means a person or entity who has deposited money or bonds to secure the release of a person charged with a crime or offense.

(d) "Bail fugitive recovery person" means a person who is provided written authorization pursuant to Sections 1300 and 1301 by the bail or depositor of bail, and is contracted to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate court, jail, or police department, and any person who is employed to assist a bail or depositor of bail to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate court, jail, or police department.

1299.02. (a) No person, other than a certified law enforcement officer, shall be authorized to apprehend, detain, or arrest a bail fugitive unless that person meets one of the following conditions:

(1) Is a bail as defined in subdivision (b) of Section 1299.01 or a depositor of bail as defined in subdivision (c) of Section 1299.01.

(2) Is a bail fugitive recovery person as defined in subdivision (d) of Section 1299.01.

(3) Holds a bail license issued by a state other than California or is authorized by another state to transact and post bail and is in compliance with the provisions of Section 847.5 with respect to the arrest of a bail fugitive.

(4) Is licensed as a private investigator as provided in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code.

(5) Holds a private investigator license issued by another state, is authorized by the bail or depositor of bail to apprehend a bail fugitive, and is in compliance with the provisions of Section 847.5 with respect to the arrest of a bail fugitive.

(b) This article shall not prohibit an arrest pursuant to Sections 837, 838, and 839.

1299.04. (a) A bail fugitive recovery person, a bail agent, bail permittee, or bail solicitor who contracts his or her services to another bail agent or surety as a bail fugitive recovery person for the purposes specified in subdivision (d) of Section 1299.01, and any bail agent, bail permittee, or bail solicitor who obtains licensing after January 1, 2000, and who engages in the arrest of a defendant pursuant to Section 1301 shall comply with the following requirements:

(1) The person shall be at least 18 years of age.

(2) The person shall have completed a 40-hour power of arrest course certified by the Commission on Peace Officer Standards and Training pursuant to Section 832. Completion of the course shall be for educational purposes only and not intended to confer the power of arrest of a peace officer or public officer, or agent of any federal, state, or local government, unless the person is so employed by a governmental agency.

(3) The person shall have completed a minimum of 12 hours of classroom education certified pursuant to Section 1810.7 of the Insurance Code.

(4) The person shall have completed a course of training in the exercise of the power to arrest offered pursuant to Section 7583.7 of the Business and Professions Code.

(5) The person shall not have been convicted of a felony.

(b) Upon completion of any course or training program required by this section, an individual authorized by Section 1299.02 to apprehend a bail fugitive shall carry certificates of completion with him or her at all times in the course of performing his or her duties under this article.

1299.05. In performing a bail fugitive apprehension, an individual authorized by Section 1299.02 to apprehend a bail fugitive shall comply with all laws applicable to that apprehension.

1299.06. Before apprehending a bail fugitive, an individual authorized by Section 1299.02 to apprehend a bail fugitive shall have in his or her possession proper documentation of authority to apprehend issued by the bail or depositor of bail as prescribed in Sections 1300 and 1301. The authority to apprehend document shall include all of the following information: the name of the individual authorized by Section 1299.02 to apprehend a bail fugitive and any fictitious name, if applicable; the address of the principal office of the individual authorized by Section 1299.02 to apprehend a bail fugitive; and the name and principal business address of the bail agency, surety company, or other party contracting with the individual authorized by Section 1299.02 to apprehend a bail fugitive.

1299.07. (a) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not represent himself or herself in any manner as being a sworn law enforcement officer.

(b) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not wear any uniform that represents himself or herself as belonging to any part or department of a federal, state, or local government. Any uniform shall not display the words United States, Bureau, Task Force, Federal, or other substantially similar words that a reasonable person may mistake for a government agency.

(c) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not wear or otherwise use a badge that represents himself or herself as belonging to any part or department of the federal, state, or local government.

(d) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not use a fictitious name that represents himself or herself as belonging to any federal, state, or local government.

1299.08. (a) Except under exigent circumstances, an individual authorized by Section 1299.02 to apprehend a bail fugitive shall, prior to and no more than six hours before attempting to apprehend the bail fugitive, notify the local police department or sheriff's

department of the intent to apprehend a bail fugitive in that jurisdiction by:

(1) Indicating the name of an individual authorized by Section 1299.02 to apprehend a bail fugitive entering the jurisdiction.

(2) Stating the approximate time an individual authorized by Section 1299.02 to apprehend a bail fugitive will be entering the jurisdiction and the approximate length of the stay.

(3) Stating the name and approximate location of the bail fugitive.

(b) If an exigent circumstance does arise and prior notification is not given as provided in subdivision (a), an individual authorized by Section 1299.02 to apprehend a bail fugitive shall notify the local police department or sheriff's department immediately after the apprehension, and upon request of the local jurisdiction, shall submit a detailed explanation of those exigent circumstances within three working days after the apprehension is made.

(c) This section shall not preclude an individual authorized by Section 1299.02 to apprehend a bail fugitive from making or attempting to make a lawful arrest of a bail fugitive on bond pursuant to Section 1300 or 1301. The fact that a bench warrant is not located or entered into a warrant depository or system shall not affect a lawful arrest of the bail fugitive.

(d) For the purposes of this section, notice may be provided to a local law enforcement agency by telephone prior to the arrest or, after the arrest has taken place, if exigent circumstances exist. In that case the name or operator number of the employee receiving the notice information shall be obtained and retained by the bail, depositor of bail, or bail fugitive recovery person.

1299.09. (a) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not forcibly enter a premises except as provided for in Section 844.

(b) Nothing in subdivision (a) shall be deemed to authorize an individual authorized by Section 12099.02 to apprehend a bail fugitive to apprehend, detain, or arrest any person except as otherwise authorized pursuant to Chapter 5 (commencing with Section 833) of Title 3 of Part 2, or any other provision of law.

1299.10. An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not carry a firearm or other weapon unless in compliance with the laws of the state.

1299.11. Any person who violates this act, or who conspires with another person to violate this act, or who hires an individual to apprehend a bail fugitive, knowing that the individual is not authorized by Section 1299.02 to apprehend a bail fugitive, is guilty of a misdemeanor punishable by a fine of five thousand dollars ($5,000) or by imprisonment in the county jail not to exceed one year, or by both that imprisonment and fine.

1299.12. This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

1299.13. Nothing in this article is intended to exempt from licensure persons otherwise required to be licensed as private investigators pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code.

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 427

An act to amend Section 13848.7 of the Penal Code, relating to theft.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 13848.7 of the Penal Code is amended to read:

13848.7. This chapter shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

CHAPTER 428

An act to add Title 2.5 (commencing with Section 1633.1) to Part 2 of Division 3 of the Civil Code, and to amend Section 18608 of the Financial Code, relating to electronic transactions.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Title 2.5 (commencing with Section 1633.1) is added to Part 2 of Division 3 of the Civil Code, to read:

TITLE 2.5. ELECTRONIC TRANSACTIONS

1633.1. This title may be cited as the Uniform Electronic Transactions Act.

1633.2. In this title the following terms have the following definitions:

(a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(c) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this title and other applicable law.

(e) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(f) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review by an individual.

(g) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(h) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(i) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(j) "Information" means data, text, images, sounds, codes, computer programs, software, data bases, or the like.

(k) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(*l*) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(o) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1107 and 1206.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3

of, or Section 3071.5 of, the Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 658, 662, 663, 664, 666, 667.5, 673, 677, 678, 678.1, 786, 10083, 10086, 10087, 10102, 10113.7, 10127.7, 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law.

1633.4. This title applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after January 1, 2000.

1633.5. (a) This title does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This title applies only to a transaction between parties each of which has agreed to conduct the transaction by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record. An agreement in such a standard form contract may not be conditioned upon an agreement to conduct transactions by electronic means. An agreement to conduct a transaction by electronic means may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase or warranty. This subdivision may not be varied by agreement.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. If a seller sells goods or services by both electronic and nonelectronic means and a buyer purchases the goods or services by conducting the transaction by electronic means, the buyer may refuse to conduct further transactions regarding the goods or services by electronic means. This subdivision may not be varied by agreement.

(d) Except as otherwise provided in this title, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this title of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

1633.6. This title shall be construed and applied according to all of the following:

(1) To facilitate electronic transactions consistent with other applicable law.

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

(3) To effectuate its general purpose to make uniform the law with respect to the subject of this title among states enacting it.

1633.7. (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

1633.8. (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, that requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this title requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, all of the following rules apply:

(1) The record shall be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in paragraph (2) of subdivision (d), the record shall be sent, communicated, or transmitted by the method specified in the other law.

(3) The record shall contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, except as follows:

(1) To the extent a law other than this title requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subdivision (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement.

(2) A requirement under a law other than this title to send, communicate, or transmit a record by first-class mail may be varied by agreement to the extent permitted by the other law.

1633.9. (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subdivision (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

1633.10. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, all of the following conditions are met:

(i) The individual promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.

(ii) The individual takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the

consideration received, if any, as a result of the erroneous electronic record.

(iii)The individual has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

1633.11. (a) If a law requires that a signature be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

(b) In a transaction, if a law requires that a statement be signed under penalty of perjury, the requirement is satisfied with respect to an electronic signature, if an electronic record includes, in addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

1633.12. (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record, if the electronic record reflects accurately the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise, and the electronic record remains accessible for later reference.

(b) A requirement to retain a record in accordance with subdivision (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subdivision (a) by using the services of another person if the requirements of subdivision (a) are satisfied.

(d) If a law requires a record to be retained in its original form, or provides consequences if the record is not retained in its original form, that law is satisfied by an electronic record retained in accordance with subdivision (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subdivision (a).

(f) A record retained as an electronic record in accordance with subdivision (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this title specifically prohibits the use of an electronic record for a specified purpose.

(g) This section does not preclude a governmental agency from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

1633.13. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

1633.14. (a) In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(b) The terms of the contract are determined by the substantive law applicable to it.

1633.15. (a) Unless the sender and the recipient agree to a different method of sending that is reasonable under the circumstances, an electronic record is sent when the information is addressed properly or otherwise directed properly to the recipient and either (1) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender, or (2) enters a region of an information processing system that is under the control of the recipient.

(b) Unless the sender and the recipient agree to a different method of receiving that is reasonable under the circumstances, an electronic record is received when the electronic record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent, in a form capable of being processed by that system, and from which the recipient is able to retrieve the electronic record.

(c) Subdivision (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subdivision (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business or, if the recipient is an individual acting on his or her own behalf, at the recipient's place of residence. For purposes of this subdivision, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subdivision (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subdivision (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subdivision (a), or purportedly received under subdivision (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, this subdivision may not be varied by agreement.

1633.16. If a law other than this title requires that a notice of the right to cancel be provided or sent, an electronic record may not substitute for a writing under that other law unless, in addition to satisfying the requirements of that other law and this title, the notice of cancellation may be returned by electronic means. This section may not be varied by agreement.

1633.17. No state agency, board, or commission may require, prohibit, or regulate the use of an electronic signature in a transaction in which the agency, board, or commission is not a party unless a law other than this title expressly authorizes the requirement, prohibition, or regulation.

SEC. 2. Section 18608 of the Financial Code is amended to read:

18608. (a) A premium finance agreement may contain a power of attorney or other authority enabling the company to cancel the insurance contract or contracts listed in the agreement in the event of default in the terms thereof.

(b) Upon the exercise of such a right to cancel, the company shall mail to the insured, to his or her last known address or to the address shown on the premium finance agreement at least 10 days prior to cancellation, a notice of its intent to cancel the insurance contract or contracts.

(c) The liability of a company to any person or corporation upon the exercise of such a right or authority of cancellation shall be limited to the amount of the principal balance, except in the event of willful failure by the company to mail the notice required by this section.

CHAPTER 429

An act to amend Section 21620 of, and to add Sections 21500.1, 21601.1, and 21620.1 to, the Elections Code, relating to local elections.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 21500.1 is added to the Elections Code, to read:

21500.1. The board shall hold at least one public hearing on any proposal to adjust the boundaries of a district, prior to a public hearing at which the board votes to approve or defeat the proposal.

SEC. 2. Section 21601.1 is added to the Elections Code, to read:

21601.1. The council shall hold at least one public hearing on any proposal to adjust the boundaries of a district prior to a public hearing at which the council votes to approve or defeat the proposal.

SEC. 3. Section 21620 of the Elections Code is amended to read:

21620. If the members of the governing body of a chartered city are nominated or elected "by districts" or "from districts," as defined in Section 34871 of the Government Code, upon the initial establishment thereof, the districts shall be as nearly equal in population as may be according to the latest federal decennial census or, if the city's charter so provides, according to the federal mid-decade census or the official census of the city, as provided for pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4 of the Government Code, as the case may be. After the initial establishment of the districts, the districts shall continue to be as nearly equal in population as may be according to the latest federal decennial census or, if authorized by the charter of the city, according to the federal mid-decade census. The districts shall comply with the applicable provisions of the federal Voting Rights Act of 1965, Section 1973 of Title 42 of the United States Code, as amended. In establishing the boundaries of the districts, the council may give consideration to the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interest of the districts.

SEC. 4. Section 21620.1 is added to the Elections Code, to read:

21620.1. The governing body shall hold at least one public hearing on any proposal to adjust the boundaries of a district prior to a public hearing at which the council votes to approve or defeat the proposal.

SEC. 5. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 430

An act to amend Section 1422.5 of the Health and Safety Code, relating to care facilities, and making an appropriation therefor.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. The Legislature finds and declares that inasmuch as the number of Californians over 60 years of age will double by the year 2020, as predicted by the 1995 federal mid-decade census, from 3.3 million to an estimated 6.6 million, and inasmuch as the number of frail elderly, 85 years of age or older, will double as well, there will continue to be a demand for institutional care, as part of the continuum of social and health care services for our aging population.

SEC. 2. Section 1422.5 of the Health and Safety Code is amended to read:

1422.5. (a) The department shall develop and establish a consumer information service system to provide updated and accurate information to the general public and consumers regarding long-term care facilities in their communities. The consumer information service system shall include, but need not be limited to, all of the following elements:

(1) An on-line inquiry system accessible through a statewide toll-free "800" number and the Internet.

(2) Long-term health care facility profiles, with data on services provided, a history of all citations and complaints for the last two full survey cycles, and ownership information. The profile for each facility shall include, but not be limited to, all of the following:

(A) The name, address, and telephone number of the facility.

(B) The number of units or beds in the facility.

(C) Whether the facility accepts Medicare or Medi-Cal patients.

(D) Whether the facility is a nursing home , and whether the facility has a special care unit or program for people with Alzheimer's disease and other dementias, and whether the facility participates in the voluntary disclosure program for special care units.

(E) Whether the facility is a for profit or not-for-profit provider.

(3) Information regarding substantiated complaints shall include the action taken and the date of action.

(4) Information regarding the state citations assessed shall include the status of the state citation, including the facility's plan or correction, and information as to whether an appeal has been filed.

(5) Any appeal resolution pertaining to a citation or complaint shall be updated on the file in a timely manner.

(b) Where feasible, the department shall interface the consumer information service system with its Automated Certification and Licensure Information Management System.

(c) It is the intent of the Legislature that the department, in developing and establishing the system pursuant to subdivision (a), maximize the use of available federal funds.

SEC. 3. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the State Department of Health Services to enable the department to implement on or before July 1, 2002, the changes made to Section 1422.5 of the Health and Safety Code, as contained in Section 2 of this act.

CHAPTER 431

An act to amend Section 15331 of the Government Code, relating to international trade and economic development.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 15331 of the Government Code is amended to read:

15331. The Office of Economic Research shall perform the following functions and activities:

(a) Gather, analyze, and interpret pertinent information on the economy developed by itself, other governmental and private agencies and publish and disseminate statistics and other information useful to industry, commerce, and agriculture. A fee may be charged for the publications to cover the cost of publication and dissemination.

(b) Provide assistance to other state agencies in the development of information or other pertinent data on the economy and the economic development of the state.

(c) Prepare or sponsor studies on the economic potential of various types of business, commercial, or industrial development in improving the economy of the state, the creation of job opportunities and the effect on the resources and environment of the state.

(d) Study, recommend, and report to the secretary on the impact of governmental policies and regulations and the expected impact of proposed policies and regulations which do or may unduly restrict beneficial economic development.

(e) Monitor, on an ongoing basis, the incentives offered by other states to attract or retain businesses and to provide that information compiled about the incentives upon request.

(f) Respond to inquiries by persons in industry, business, commerce, or other governmental units concerning the economy, economic conditions, and international trade information in the state.

CHAPTER 432

An act to add Section 23812 to the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 23812 is added to the Education Code, to read:

23812. (a) The surviving spouse of a deceased member who previously lost entitlement to benefits prescribed by this part due to remarriage shall be entitled to resume payment of the benefit effective either on January 1, 2000, or the first of the month following receipt by the board of a written application for resumption of benefits, whichever date is later. The amount of the benefit payable shall be calculated as though the benefit had been paid without interruption from the date of remarriage through the benefit resumption effective date.

(b) The board shall be under no requirement to identify, locate, or notify a remarried spouse of a deceased member who previously lost entitlement as a result of remarriage about the resumption of benefits provided in this section. The board shall be under no requirement to provide the name or address or any other information concerning any remarried spouse of a deceased member to any person, agency, or entity for the purpose of notifying those who may be eligible for the resumption of benefits under this section.

(c) Nothing in this section shall be construed to imply or interpreted to mean that the benefits addressed shall be required to be paid retroactively.

CHAPTER 433

An act to amend Sections 84200.3, 84602, 84603, 84604, 84605, 84606, and 84610 of the Government Code, relating to the Political Reform

Act of 1974, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 84200.3 of the Government Code, as added by Chapter 158 of the Statutes of 1999, is amended to read:

84200.3. (a) In connection with a statewide direct primary held in March of an even-numbered year, and any other election held on the same day as that election, the following candidates and committees shall file campaign statements pursuant to Section 84200.4 for the calendar year prior to the election:

(1) All candidates who have filed or are required to file a statement of intention pursuant to Section 85200 in connection with the election, their controlled committees, and committees primarily formed to support or oppose those candidates.

(2) Committees formed pursuant to subdivision (a) of Section 82013 that are primarily formed to support the qualification, passage, or defeat of a measure being voted upon in the election.

(3) State and county general purpose committees formed pursuant to subdivision (a) of Section 82013, except that a committee covered by this subdivision is not required to file pursuant to subdivision (a) of Section 84200.4 if it has not made contributions or independent expenditures totaling five hundred dollars ($500) or more during the period July 1 through September 30.

(4) City general purpose committees formed pursuant to Section 82013, except that a committee covered by this subdivision is not required to file pursuant to subdivision (a) of Section 84200.4 if it has not made contributions or independent expenditures totaling five hundred dollars ($500) or more during the period July 1 through September 30.

(5) Candidates and committees not covered under paragraphs (1) to (4), inclusive, that make contributions totaling five thousand dollars ($5,000) or more to an elected state officer, a candidate for elective state office, his or her controlled committee, or a committee primarily formed to support or oppose any elected state officer or candidate for elective state office during the period July 1, through September 30 or July 1 through December 31.

(6) Any slate mailer organization that produces a slate mailer supporting or opposing a candidate or measure being voted on in the election if the slate mailer organization receives payments totaling five hundred dollars ($500) or more from any person for the support of or opposition to a candidate or ballot measure in one or more slate mailers, or expends five hundred dollars ($500) or more to produce one or more slate mailers.

(b) A candidate, committee, or slate mailer organization required to file a campaign statement pursuant to this section is not required to file a campaign statement pursuant to Section 84200 or 84218 for the period ending December 31 of the year prior to the statewide direct primary election.

(c) A candidate or committee who has filed a campaign statement pursuant to this section is not required to file additional statements pursuant to Section 84202.3, 84202.5, or 84202.7.

SEC. 2. Section 84602 of the Government Code is amended to read:

84602. To implement the Legislature's intent, the Secretary of State, in consultation with the commission, notwithstanding any other provision of this title or any other provision of the Government Code, shall do all of the following:

(a) Develop online and electronic filing processes for use by persons and entities specified in Sections 84604 and 84605 required to file statements and reports with the Secretary of State's office pursuant to Chapter 4 (commencing with Section 84100) and Chapter 6 (commencing with Section 86100). As part of that process, the Secretary of State shall define a nonproprietary standardized record format or formats using industry standards for the transmission of the data that is required of those persons and entities specified in subdivision (a) of Section 84604 and Section 84605 and that conforms with the disclosure requirements of this title. The Secretary of State shall hold public hearings prior to development of the record format or formats as a means to ensure that affected entities have an opportunity to provide input into the development process. The format or formats shall be made public no later than July 1, 1999, to ensure sufficient time to comply with the requirements of this chapter.

(b) Accept test files, from software vendors and others wishing to file reports electronically, for the purpose of determining whether the file format is in compliance with the standardized record format developed pursuant to subdivision (a) and is compatible with the Secretary of State's system for receiving the data. A list of software and service providers who have submitted acceptable test files shall be published by the Secretary of State and made available to the public. Acceptably formatted files shall be submitted by a filer in order to meet the requirements of this chapter.

(c) Develop a system that provides for the online or electronic transfer of the data specified in this section utilizing telecommunications technology that assures the integrity of the data transmitted and that creates safeguards against efforts to tamper with or subvert the data.

(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure

reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms.

(e) Develop a procedure for filers to comply with the requirement that they sign under penalty of perjury pursuant to Section 81004.

(f) Maintain all filed data online for 10 years after the date it is filed, and then archive the information in a secure format.

(g) Provide assistance to those seeking public access to the information.

(h) Consult with the Department of Information Technology and implement sufficient technology to seek to prevent unauthorized alteration or manipulation of the data.

(i) Provide the commission with necessary information to enable it to assist agencies, public officials, and others, with the compliance and with administration of this title.

(j) Report to the Legislature on the implementation and development of the online and electronic filing and disclosure requirements of this chapter. The report shall include an examination of system security, private security issues, software availability, compliance costs to filers, and other issues relating to this chapter, recommending appropriate changes if necessary. In preparing the report, the commission may present to the Secretary of State and the Legislature its comments regarding this chapter as it relates to the duties of the commission and suggest appropriate changes if necessary. There shall be one report due before the system is operational as set forth in Section 84603, and one due no later than June 1, 2001.

SEC. 3. Section 84603 of the Government Code is amended to read:

84603. The Secretary of State, once all state-mandated development, procurement, and oversight requirements have been met, shall make public their availability to accept reports online or electronically. Any filer may then commence voluntarily filing online or electronically any required report or statement that is otherwise required to be filed with the Secretary of State pursuant to Chapter 4 (commencing with Section 84100) or Chapter 6 (commencing with Section 86100) of this title.

SEC. 4. Section 84604 of the Government Code is amended to read:

84604. (a) The Secretary of State shall implement an online or electronic disclosure program in connection with the 2000 state primary election and the lobbying activities specified in paragraph (4). Entities specified in paragraphs (1), (2), and (3) shall commence online or electronic disclosure with the first preelection statement filed in connection with the 2000 statewide direct primary election

for the period ending January 22, 2000, and shall continue to disclose online or electronically all required reports and statements up to and including the semiannual statement for the period ending June 30, 2000. Entities specified in paragraph (4) shall commence online or electronic disclosure with the quarterly report for the period ending March 31, 2000, and shall continue to disclose online or electronically all required reports and statements up to and including the quarterly report for the period ending June 30, 2000. The entities subject to this section are the following:

(1) Any candidate, including appellate court and Supreme Court candidates and officeholders, committee, or other persons who are required, pursuant to Chapter 4 (commencing with Section 84100), to file statements, reports, or other documents in connection with a state elective office or state measure appearing on the 2000 statewide direct primary ballot, provided that the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received is one hundred thousand dollars ($100,000) or more. For the purpose of cumulating totals, the period covered shall commence January 1, 1999.

(2) Any general purpose committees, as defined in Section 82027.5, including the general purpose committees of political parties, and small contributor committees, as defined in Section 85203, that cumulatively receive contributions or make expenditures totaling one hundred thousand dollars ($100,000) or more to support or oppose candidates for any elective state office or state measure appearing on the 2000 statewide direct primary ballot. For the purpose of cumulating totals, the period covered shall commence January 1, 1999.

(3) Any slate mailer organization with cumulative reportable payments received or made for the purposes of producing slate mailers of one hundred thousand dollars ($100,000) or more in connection with the 2000 statewide direct primary election. For the purpose of cumulating totals, the period covered shall commence January 1, 1999.

(4) Any lobbyist, lobbying firm, lobbyist employer, or other persons required, pursuant to Chapter 6 (commencing with Section 86100), to file statements, reports, or other documents, provided that the total amount of any category of reportable payments, expenses, contributions, gifts, or other items is one hundred thousand dollars ($100,000) or more in a calendar quarter.

(b) Filers specified in subdivision (a) shall also continue to file required disclosure forms in paper format. The paper copy shall continue to be the official version for audit and other legal purposes. Committees and other persons that are not required to file online or electronically by this section may do so voluntarily.

(c) The Secretary of State shall also disclose on the Internet any late contribution or late independent expenditure report, as defined

by Sections 84203 and 84204, respectively, not covered by subdivision (a).

(d) It shall be presumed that online or electronic filers file under penalty of perjury.

SEC. 5. Section 84605 of the Government Code is amended to read:

84605. Beginning on July 1, 2000, and for all applicable reporting periods thereafter, the following persons shall file online or electronically with the Secretary of State:

(a) Any candidate, including appellate court and Supreme Court candidates and officeholders, committee, or other persons who are required, pursuant to Chapter 4 (commencing with Section 84100), to file statements, reports, or other documents in connection with a state elective office or state measure, provided that the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received is fifty thousand dollars ($50,000) or more. In determining the cumulative reportable amount, all controlled committees, as defined by Section 82016, and officeholder accounts, as defined by Section 85313, shall be included. For a committee subject to this title prior to January 1, 2000, the beginning date for calculating cumulative totals is January 1, 2000. For a committee that is first subject to this title on or after January 1, 2000, the beginning date for calculating cumulative totals is the date the committee is first subject to this title. A committee, as defined in subdivision (c) of Section 82013, shall file online or electronically if it makes contributions of fifty thousand dollars ($50,000) or more in a calendar year.

(b) Any general purpose committees, as defined in Section 82027.5, including the general purpose committees of political parties, and small contributor committees, as defined in Section 85203, that cumulatively receive contributions or make expenditures totaling fifty thousand dollars ($50,000) or more to support or oppose candidates for any elective state office or state measure. For a committee subject to this title prior to January 1, 2000, the beginning date for calculating cumulative totals is January 1, 2000. For a committee that first is subject to this title on or after January 1, 2000, the beginning date for calculating cumulative totals is the date the committee is first subject to this title.

(c) Any slate mailer organization with cumulative reportable payments received or made for the purposes of producing slate mailers of fifty thousand dollars ($50,000) or more. For a slate mailer organization subject to this title prior to January 1, 2000, the beginning date for calculating cumulative totals is January 1, 2000. For a slate mailer organization that first is subject to this title on or after January 1, 2000, the beginning date for calculating cumulative totals is the date the organization is first subject to this title.

(d) Any lobbyist, lobbying firm, lobbyist employer or other persons required, pursuant to Chapter 6 (commencing with Section

86100), to file statements, reports, or other documents, provided that the total amount of any category of reportable payments, expenses, contributions, gifts, or other items is five thousand dollars ($5,000) or more in a calendar quarter.

(e) The Secretary of State shall also disclose on the Internet any late contribution or late independent expenditure report, as defined by Sections 84203 and 84204, respectively, not covered by subdivision (a), (b), or (c).

(f) Committees and other persons that are not required to file online or electronically by this section may do so voluntarily.

(g) Once a person or entity is required to file online or electronically, subject to subdivision (a), (b), (c), (d), or (f), the person or entity shall be required to file all subsequent reports online or electronically.

(h) It shall be presumed that online or electronic filers file under penalty of perjury.

(i) Persons filing online or electronically shall also continue to file required disclosure statements and reports in paper format. The paper copy shall continue to be the official filing for audit and other legal purposes until the Secretary of State, pursuant to Section 84606, determines the system is operating securely and effectively.

(j) The Secretary of State shall maintain at all times a secured, official version of all original online and electronically filed statements and reports required by this chapter. Upon determination by the Secretary of State, pursuant to Section 84606, that the system is operating securely and effectively, this online or electronic version shall be the official version for audit and other legal purposes.

SEC. 6. Section 84606 of the Government Code is amended to read:

84606. The Secretary of State shall determine and publicly disclose when the online and electronic disclosure systems are operating effectively. In making this determination, the Secretary of State shall consult with the commission, the Department of Information Technology, and any other appropriate public or private entity. The online or electronic disclosure system shall not become operative until the Department of Information Technology approves the system. Upon this determination, filers required by this chapter to file online or electronically will no longer be required to file a paper copy or with local filing officers. Furthermore, the date that a filer transmits an online or electronic report shall be the date the filed report is received by the Secretary of State.

SEC. 7. Section 84610 of the Government Code is amended to read:

84610. There is hereby appropriated from the General Fund of the state to the Secretary of State the sum of one million one hundred thousand dollars ($1,100,000) for the purposes of developing the online and electronic disclosure systems provided by this chapter and

reimbursing local agencies for any costs they incur in the development of these systems.

SEC. 8. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

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

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the Secretary of State to implement the online and electronic filing and disclosure systems described in Sections 1 to 7 of the act in time for the 2000 statewide direct primary election, it is necessary that this act take effect immediately.

CHAPTER 434

An act to amend Sections 1357 and 1357.50 of the Health and Safety Code, and to amend Section 10700 of the Insurance Code, relating to small employer health insurance.

[Approved by Governor September 16, 1999. Filed with Secretary of State September 16, 1999.]

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

SECTION 1. Section 1357 of the Health and Safety Code is amended to read:

1357. As used in this article:

(a) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health care plan contract covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (o).

(b) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, at the small employer's

regular places of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business and included as employees under a health care plan contract of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer. Permanent employees who work at least 20 hours but not more than 29 hours are deemed to be eligible employees if all four of the following apply:

(A) They otherwise meet the definition of an eligible employee except for the number of hours worked.

(B) The employer offers the employees health coverage under a health benefit plan.

(C) All similarly situated individuals are offered coverage under the health benefit plan.

(D) The employee must have worked at least 20 hours per normal workweek for at least 50 percent of the weeks in the previous calendar quarter. The health care service plan may request any necessary information to document the hours and time period in question, including, but not limited to, payroll records and employee wage and tax filings.

(2) Any member of a guaranteed association as defined in subdivision (o).

(c) "In force business" means an existing health benefit plan contract issued by the plan to a small employer.

(d) "Late enrollee" means an eligible employee or dependent who has declined enrollment in a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's plan contract and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, any other person eligible for coverage through a guaranteed association pursuant to subdivision (o), or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) He or she was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) He or she certified at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment, provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) He or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage.

(D) He or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan.

(2) The employer offers multiple health benefit plans and the employee elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) (A) In the case of an eligible employee as defined in paragraph (1) of subdivision (b), the plan cannot produce a written statement from the employer stating that the individual or the person through whom the individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed, acknowledgment of an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(B) In the case of an association member who did not purchase coverage through a guaranteed association, the plan cannot produce a written statement from the association stating that the association sent a written notice in boldface type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an

exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or paragraph (2) or (3).

(C) In the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for enrollment was made within 30 days of the change.

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days after notification of this loss of coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf, and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health

coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(e) "New business" means a health care service plan contract issued to a small employer that is not the plan's in force business.

(f) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the employee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(g) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service

Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(h) "Rating period" means the period for which premium rates established by a plan are in effect and shall be no less than six months.

(i) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(j) "Risk adjustment factor" means the percentage adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard cost of services. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(k) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family composition of the employee, plus the health benefit plan selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30
30–39
40–49
50–54
55–59
60–64
65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the plan contract will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer health care service plans shall base rates to small employers using no more than the following family size categories:

(A) Single.
(B) Married couple.
(C) One adult and child or children.
(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a plan that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county, and divide no county into more than two regions. Plans shall be deemed

to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a plan that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties that are included in their entirety in a plan's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No plan shall have less than one geographic area.

Nothing in this section shall be construed to require a plan to establish a new service area or to offer health coverage on a statewide basis, outside of the plan's existing service area.

(*l*) "Small employer" means either of the following:

(1) Any person, firm, proprietary or nonprofit corporation, partnership, public agency, or association that is actively engaged in business or service, that, on at least 50 percent of its working days during the preceding calendar quarter or preceding calendar year, employed at least two, but no more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health care service plan contracts, and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, a health care service plan shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (a), (b), and (c) of Section 1357.03, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health care service plan contract to a small employer pursuant to this article, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided in this article, provisions of this article that apply to a small employer shall continue to apply until the plan contract anniversary following the date the employer no longer meets the requirements

of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (n), that purchases health coverage for members of the association.

(m) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(n) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, and that (1) includes one or more small employers as defined in paragraph (1) of subdivision (*l*), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered to the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has included health insurance as a membership benefit for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any plan contract that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the plan contracts offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the health care service plan with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a contract issued by a plan is with an association or a trust formed for, or sponsored by, an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(o) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health

coverage through the association. At the association's discretion, it also may include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include these persons as members of the guaranteed association, the association shall make that election in advance of purchasing a plan contract. Health care service plans may require an association to adhere to the membership composition it selects for up to 12 months.

(p) "Affiliation period" means a period that, under the terms of the health care service plan contract, must expire before health care services under the contract become effective.

SEC. 2. Section 1357.50 of the Health and Safety Code is amended to read:

1357.50. For purposes of this article:

(a) "Health benefit plan" means any individual or group, insurance policy or health care service plan contract, that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan. The health benefit plan shall enroll a dependent child within 30 days after receipt of a court order or request from the district attorney, either parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, the employer, or the group administrator. In the case of children who are eligible for medicaid, the State Department of Health Services may also make the request.

(4) The plan cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in bold type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision, and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days of notification of this loss of coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth,

adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf, and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(c) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the enrollee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Creditable coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or

without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(e) "Waivered condition" means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

(f) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 3. Section 10700 of the Insurance Code is amended to read:

10700. As used in this chapter:

(a) "Agent or broker" means a person or entity licensed under Chapter 5 (commencing with Section 1621) of Part 2 of Division 1.

(b) "Benefit plan design" means a specific health coverage product issued by a carrier to small employers, to trustees of associations that include small employers, or to individuals if the coverage is offered through employment or sponsored by an employer. It includes services covered and the levels of copayment and deductibles, and it may include the professional providers who are to provide those services and the sites where those services are to be provided. A benefit plan design may also be an integrated system for the financing and delivery of quality health care services which has significant incentives for the covered individuals to use the system.

(c) "Board" means the Major Risk Medical Insurance Board.

(d) "Carrier" means any disability insurance company or any other entity that writes, issues, or administers health benefit plans that cover the employees of small employers, regardless of the situs of the contract or master policyholder. For the purposes of Articles 3 (commencing with Section 10719) and 4 (commencing with Section 10730), "carrier" also includes health care service plans.

(e) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefit plan covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (z).

(f) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, in the small employer's regular place of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business, and they are included as employees under a health benefit plan of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer. A permanent employee who works at least 20 hours but not more than 29 hours is deemed to be an eligible employee if all four of the following apply:

(A) The employee otherwise meets the definition of an eligible employee except for the number of hours worked.

(B) The employer offers the employee health coverage under a health benefit plan.

(C) All similarly situated individuals are offered coverage under the health benefit plan.

(D) The employee must have worked at least 20 hours per normal workweek for at least 50 percent of the weeks in the previous calendar quarter. The insurer may request any necessary information to document the hours and time period in question, including, but not limited to, payroll records and employee wage and tax filings.

(2) Any member of a guaranteed association as defined in subdivision (z).

(g) "Enrollee" means an eligible employee or dependent who receives health coverage through the program from a participating carrier.

(h) "Financially impaired" means, for the purposes of this chapter, a carrier that, on or after the effective date of this chapter, is not insolvent and is either:

(1) Deemed by the commissioner to be potentially unable to fulfill its contractual obligations.

(2) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(i) "Fund" means the California Small Group Reinsurance Fund.

(j) "Health benefit plan" means a policy or contract written or administered by a carrier that arranges or provides health care benefits for the covered eligible employees of a small employer and their dependents. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(k) "In force business" means an existing health benefit plan issued by the carrier to a small employer.

(*l*) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's health benefit plan and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, another person eligible for coverage through a guaranteed association pursuant to subdivision (z), or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) He or she was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) He or she certified at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision

and was notified that failure to do so could result in later treatment as a late enrollee.

(C) He or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual, or of a person through whom the individual was covered as a dependent, the termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage.

(D) He or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer who offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) (A) In the case of an eligible employee as defined in paragraph (1) of subdivision (f), the carrier cannot produce a written statement from the employer stating that the individual or the person through whom an individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed acknowledgment of, an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(B) In the case of an eligible employee who is a guaranteed association member, the plan cannot produce a written statement from the guaranteed association stating that the association sent a written notice in boldface type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or paragraph (2) or (3).

(C) In the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a

guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for coverage was made within 30 days of the change.

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.62 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days after notification of this loss of coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf, and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(m) "New business" means a health benefit plan issued to a small employer that is not the carrier's in force business.

(n) "Participating carrier" means a carrier that has entered into a contract with the program to provide health benefits coverage under this part.

(o) "Plan of operation" means the plan of operation of the fund, including articles, bylaws and operating rules adopted by the fund pursuant to Article 3 (commencing with Section 10719).

(p) "Program" means the Health Insurance Plan of California.

(q) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(r) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program, that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service

Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(s) "Rating period" means the period for which premium rates established by a carrier are in effect and shall be no less than six months.

(t) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(u) "Risk adjustment factor" means the percent adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard claims. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(v) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family size of the employee, plus the benefit plan design selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30
30–39
40–49
50–54
55–59
60–64
65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the health benefit plan will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer carriers shall base rates to small employers using no more than the following family size categories:

(A) Single.

(B) Married couple.

(C) One adult and child or children.

(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a carrier that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and shall divide no county into more than two regions. Carriers shall be

deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a carrier that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties which are included in their entirety in a carrier's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No carrier shall have less than one geographic area.

(w) "Small employer" means either of the following:

(1) Any person, proprietary or nonprofit firm, corporation, partnership, public agency, or association that is actively engaged in business or service that, on at least 50 percent of its working days during the preceding calendar quarter, or preceding calendar year, employed at least two, but not more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, the insurer shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (b) and (h) of Section 10705, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined income tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer pursuant to this chapter, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of this chapter that apply to a small employer shall continue to apply until the health benefit plan anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (y), that purchases health coverage for members of the association.

(x) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(y) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria which (1) includes one or more small employers as defined in paragraph (1) of subdivision (w), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has been offering health insurance to its members for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any benefit plan design that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the benefit plan design offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the carrier with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a master policy by an admitted insurer is delivered directly to the association or a trust formed for or sponsored by an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(z) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it may also include employees of association members, association staff, retired members, retired employees of members, and surviving

spouses and dependents of deceased members. However, if an association chooses to include those persons as members of the guaranteed association, the association must so elect in advance of purchasing coverage from a plan. Health plans may require an association to adhere to the membership composition it selects for up to 12 months.

(aa) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 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.

CHAPTER 435

An act to amend Section 4801 of the Fish and Game Code, relating to wildlife, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1999. Filed with Secretary of State September 17, 1999.]

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

SECTION 1. Section 4801 of the Fish and Game Code is amended to read:

4801. The department may remove or take any mountain lion, or authorize an appropriate local agency with public safety responsibility to remove or take any mountain lion, that is perceived to be an imminent threat to public health or safety or that is perceived by the department to be an imminent threat to the survival of any threatened, endangered, candidate, or fully protected sheep species.

SEC. 2. The Legislature finds and declares that the amendments made by this act to Section 4801 of the Fish and Game Code are consistent with, and further the purposes of, the California Wildlife Protection Act of 1990.

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 prevent the extinction of the Sierra Nevada Bighorn Sheep as soon as possible, thereby protecting the environment, it is necessary that this act take effect immediately.

CHAPTER 436

An act to amend Sections 2530.2, 2530.5, 2531, and 2532.6 of, and to add Sections 2532.7 and 2532.8 to, the Business and Professions Code, relating to the Speech-Language Pathology and Audiology Board, and making an appropriation therefor.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Speech-Language Pathology and Audiology Board or any successor.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

(c) A "speech-language pathologist" is a person who practices speech-language pathology.

(d) "The practice of speech-language pathology" means the application of principles, methods, and procedures for measurement, testing, identification, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of identifying, preventing, managing, habilitating or rehabilitating, ameliorating, or modifying those disorders and conditions in individuals or groups of individuals; conducting hearing screenings; and the planning, directing, conducting and supervision of programs for identification, evaluation, habilitation, and rehabilitation of disorders of speech, voice, or language.

(e) "Speech-language pathology aide" means any person meeting the minimum requirements established by the board, who works directly under the supervision of a speech-language pathologist.

(f) (1) "Speech-language pathology assistant" means a person who meets the academic and supervised training requirements set forth by the board and who is approved by the board to assist in the provision of speech-language pathology under the direction and supervision of a speech-language pathologist who shall be responsible

for the extent, kind, and quality of the services provided by the speech-language pathology assistant.

(2) The supervising speech-language pathologist employed or contracted for by a public school may hold a valid and current license issued by the board, a valid, current, and professional clear clinical or rehabilitative services credential in language, speech, and hearing issued by the Commission on Teacher Credentialing, or other credential authorizing service in language, speech, and hearing issued by the Commission on Teacher Credentialing that is not issued on the basis of an emergency permit or waiver of requirements. For purposes of this paragraph, a "clear" credential is a credential that is not issued pursuant to a waiver or emergency permit and is as otherwise defined by the Commission on Teacher Credentialing. Nothing in this section referring to credentialed supervising speech-language pathologists expands existing exemptions from licensing pursuant to Section 2530.5.

(g) An "audiologist" is one who practices audiology.

(h) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from auditory dysfunction; and the planning, directing, conducting, supervising, or participating in programs of identification of auditory disorders, hearing conservation, cerumen removal, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures including, but not limited to, specifying amplification requirements and evaluation of the results thereof, auditory training, and speech reading.

(i) "Audiology aide" means any person, meeting the minimum requirements established by the board, who works directly under the supervision of an audiologist.

(j) "Medical board" means the Medical Board of California or a division of the board.

(k) A "hearing screening" performed by a speech-language pathologist means a binary puretone screening at a preset intensity level for the purpose of determining if the screened individuals are in need of further medical or audiological evaluation.

(*l*) "Cerumen removal" means the nonroutine removal of cerumen within the cartilaginous ear canal necessary for access in performance of audiological procedures that shall occur under physician and surgeon supervision. Cerumen removal, as provided by this section, shall only be performed by a licensed audiologist. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but shall include all of the following:

(1) Collaboration on the development of written standardized protocols. The protocols shall include a requirement that the supervised audiologist immediately refer to an appropriate physician any trauma, including skin tears, bleeding, or other pathology of the ear discovered in the process of cerumen removal as defined in this subdivision.

(2) Approval by the supervising physician of the written standardized protocol.

(3) The supervising physician shall be within the general vicinity, as provided by the physician-audiologist protocol, of the supervised audiologist and available by telephone contact at the time of cerumen removal.

(4) A licensed physician and surgeon may not simultaneously supervise more than two audiologists for purposes of cerumen removal.

SEC. 2. Section 2530.5 of the Business and Professions Code is amended to read:

2530.5. (a) Nothing in this chapter shall be construed as restricting hearing testing conducted by licensed physicians and surgeons or by persons conducting hearing tests under the direct supervision of a physician and surgeon.

(b) Nothing in this chapter shall be construed to prevent a licensed hearing aid dispenser from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids nor does this chapter restrict persons practicing their licensed profession and operating within the scope of their licensed profession or employed by someone operating within the scope of their licensed professions, including persons fitting and selling hearing aids who are properly licensed or registered under the laws of the State of California.

(c) Nothing in this chapter shall be construed as restricting or preventing the practice of speech-language pathology or audiology by personnel holding the appropriate credential from the Commission on Teacher Credentialing as long as the practice is conducted within the confines of or under the jurisdiction of a public preschool, elementary or secondary school by which they are employed and those persons do not either offer to render or render speech-language pathology or audiology services to the public for compensation over and above the salary they receive from the public preschool elementary or secondary school by which they are employed for the performance of their official duties.

(d) Nothing in this chapter shall be construed as restricting the activities and services of a student or speech-language pathology intern in speech-language pathology pursuing a course of study leading to a degree in speech-language pathology at an accredited or approved college or university or an approved clinical training facility, provided that these activities and services constitute a part of his or her supervised course of study and that those persons are

designated by the title as "speech-language pathology intern," "speech-language pathology trainee," or other title clearly indicating the training status appropriate to his or her level of training.

(e) Nothing in this chapter shall be construed as restricting the activities and services of a student or audiology intern in audiology pursuing a course of study leading to a degree in audiology at an accredited or approved college or university or an approved clinical training facility, provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title as "audiology intern," "audiology trainee," or other title clearly indicating the training status appropriate to his or her level of training.

(f) Nothing in this chapter shall be construed as restricting the practice of an applicant who is obtaining the required professional experience specified in subdivision (d) of Section 2532.2 and who has been issued a temporary license pursuant to Section 2532.7. The number of applicants who may be supervised by a licensed speech-language pathologist or a speech-language pathologist having qualifications deemed equivalent by the board shall be determined by the board. The supervising speech-language pathologist shall register with the board the name of each applicant working under his or her supervision, and shall submit to the board a description of the proposed professional responsibilities of the applicant working under his or her supervision. The number of applicants who may be supervised by a licensed audiologist or an audiologist having qualifications deemed equivalent by the board shall be determined by the board. The supervising audiologist shall register with the board the name of each applicant working under his or her supervision, and shall submit to the board a description of the proposed professional responsibilities of the applicant working under his or her supervision.

The board shall not give any credit for any required professional experience that is completed in violation of this section.

(g) Nothing in this chapter shall be construed as restricting hearing screening services in public or private elementary or secondary schools so long as these screening services are provided by persons registered as qualified school audiometrists pursuant to Sections 1685 and 1686 of the Health and Safety Code or hearing screening services supported by the State Department of Health Services so long as these screening services are provided by appropriately trained or qualified personnel.

(h) Persons employed as speech-language pathologists or audiologists by a federal agency shall be exempt from this chapter.

(i) Nothing in this chapter shall be construed as restricting consultation or the instructional or supervisory activities of a faculty member of an approved or accredited college or university for the first 60 days following appointment after the effective date of this subdivision.

SEC. 3. Section 2531 of the Business and Professions Code is amended to read:

2531. There is hereby created a Speech-Language Pathology and Audiology Board under the jurisdiction of the Medical Board of California. The Speech-Language Pathology and Audiology Board shall consist of nine members, three of whom shall be public members. The Speech-Language Pathology and Audiology Board shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2003, deletes or extends the inoperative and repeal dates.

SEC. 4. Section 2532.6 of the Business and Professions Code is amended to read:

2532.6. (a) The Legislature recognizes that the education and experience requirements of this chapter constitute only minimal requirements to assure the public of professional competence. The Legislature encourages all professionals licensed and registered by the board under this chapter to regularly engage in continuing professional development and learning that is related and relevant to the professions of speech-language pathology and audiology.

(b) On and after January 1, 2001, and until January 1, 2002, the board shall not renew any license or registration pursuant to this chapter unless the applicant certifies to the board that he or she has completed, after April 12, 1999, and prior to his or her renewal date in 2001, not less than the minimum number of continuing professional development hours established by the board pursuant to subdivision (c) for the professional practice authorized by his or her license. On and after January 1, 2002, the board shall not renew any license or registration pursuant to this chapter unless the applicant certifies to the board that he or she has completed in the preceding two years not less than the minimum number of continuing professional development hours established by the board pursuant to subdivision (c) for the professional practice authorized by his or her license or registration.

(c) (1) The board shall prescribe the forms utilized for and the number of hours of required continuing professional development for persons licensed or registered under this chapter.

(2) The board shall have the right to audit the records of any applicant to verify the completion of the continuing professional development requirements.

(3) Applicants shall maintain records of completion of required continuing professional development coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(d) The board shall establish exceptions from the continuing professional development requirements of this section for good cause as defined by the board.

(e) (1) The continuing professional development services shall be obtained from accredited institutions of higher learning, organizations approved as continuing education providers by either the American Speech-Language Hearing Association or the American Academy of Audiology, the California Medical Association's Institute for Medical Quality Continuing Medical Education Program, or other entities or organizations approved as continuing professional development providers by the board, in its discretion.

(2) The continuing professional development services offered by these entities may, but are not required to, utilize pretesting and posttesting or other evaluation techniques to measure and demonstrate improved professional learning and competency.

(3) An accredited institution of higher learning, an organization approved as continuing education providers by either the American Speech-Language Hearing Association or the American Academy of Audiology, and the California Medical Association's Institute for Medical Quality Continuing Education Program shall be exempt from any application or registration fees that the board may charge for continuing education providers.

(f) The board, by regulation, shall fund the administration of this section through professional development services provider and licensing fees to be deposited in the Speech-Language Pathology and Audiology Board Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section.

(g) The continuing professional development requirements adopted by the board shall comply with any guidelines for mandatory continuing education established by the Department of Consumer Affairs.

SEC. 5. Section 2532.7 is added to the Business and Professions Code, to read:

2532.7. (a) Upon approval of an application filed pursuant to Section 2532.1, and upon payment of the fee prescribed by Section 2534.2, the board may issue a temporary license for a period to be determined by the board to an applicant who is obtaining the required professional experience specified in subdivision (d) of Section 2532.2.

(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 for a period to be determined by the board to an applicant who is obtaining the required professional experience specified in subdivision (d) of Section 2532.2.

SEC. 6. Section 2532.8 is added to the Business and Professions Code, to read:

2532.8. The board shall deem a person who holds a valid certificate of clinical competence in speech-language pathology or audiology issued by the National Council on Professional Standards in Speech Language Pathology and Audiology to have met the educational and experience requirements set forth for speech-language pathologists or audiologists in Section 2532.2.

CHAPTER 437

An act to amend Sections 160, 168, 174.5, 175, 181, 1001, 1100, 1101, 1101.1, 1109, 1113, 1200, 1201, 6010, 6020, 6021, 6022, 8010, 8020, 8021, 8022, 9640, 12530, 12550, 12551, 12552, 15679.1, 16901, 16911, 16914, 16915, 16916, and 17600 of, and to add Sections 5063.5, 5064.5, 6019.1, 8019.1, 12242.5, 12242.6, and 12540.1 to, the Corporations Code, relating to legal entities.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 160 of the Corporations Code is amended to read:

160. (a) Except as provided in subdivision (b), "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation.

(b) "Control" in Sections 181, 1001, and 1200 means the ownership directly or indirectly of shares or equity securities possessing more than 50 percent of the voting power of a domestic corporation, a foreign corporation, or an other business entity.

SEC. 2. Section 168 of the Corporations Code is amended to read:

168. "Equity security" in Sections 181, 1001, 1113, 1200, and 1201 means any share or membership of a domestic or foreign corporation; any partnership interest, membership interest, or equivalent equity interest in an other business entity; and any security convertible with or without consideration into, or any warrant or right to subscribe to or purchase, any of the foregoing.

SEC. 3. Section 174.5 of the Corporations Code is amended to read:

174.5. "Other business entity" means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, "general partnership" means a "partnership"

as defined in subdivision (7) of Section 16101; "business trust" means a business organization formed as a trust; "real estate investment trust" means a "real estate investment trust" as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and "unincorporated association" has the meaning set forth in Section 24000.

SEC. 4. Section 175 of the Corporations Code is amended to read:

175. Except as used in Sections 1001, 1101, and 1113, a "parent" of a specified corporation is an affiliate in control (Section 160(a)) of that corporation directly or indirectly through one or more intermediaries. In Sections 1001, 1101, and 1113, "parent" means a person in control (Section 160(b)) of a domestic corporation, a foreign corporation, or an other business entity.

SEC. 5. Section 181 of the Corporations Code is amended to read:

181. "Reorganization" means either:

(a) A merger pursuant to Chapter 11 (commencing with Section 1100) other than a short-form merger (a "merger reorganization").

(b) The acquisition by one domestic corporation, foreign corporation, or other business entity in exchange, in whole or in part, for its equity securities (or the equity securities of a domestic corporation, a foreign corporation, or an other business entity which is in control of the acquiring entity) of equity securities of another domestic corporation, foreign corporation, or other business entity if, immediately after the acquisition, the acquiring entity has control of the other entity (an "exchange reorganization").

(c) The acquisition by one domestic corporation, foreign corporation, or other business entity in exchange in whole or in part for its equity securities (or the equity securities of a domestic corporation, a foreign corporation, or an other business entity which is in control of the acquiring entity) or for its debt securities (or debt securities of a domestic corporation, foreign corporation, or other business entity which is in control of the acquiring entity) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the reorganization, or both, of all or substantially all of the assets of another domestic corporation, foreign corporation, or other business entity (a "sale-of-assets reorganization").

SEC. 6. Section 1001 of the Corporations Code is amended to read:

1001. (a) A corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms are approved by the board, and, unless the transaction is in the usual and regular course of its business, approved by the outstanding shares (Section 152), either before or after approval by the board and before or after the transaction.

A transaction constituting a reorganization (Section 181) is subject to the provisions of Chapter 12 (commencing with Section 1200) and not this section (other than subdivision (d)).

(b) Notwithstanding approval of the outstanding shares (Section 152), the board may abandon the proposed transaction without further action by the shareholders, subject to the contractual rights, if any, of third parties.

(c) The sale, lease, conveyance, exchange, transfer or other disposition may be made upon those terms and conditions and for that consideration as the board may deem in the best interests of the corporation. The consideration may be money, securities, or other property.

(d) If the acquiring party in a transaction pursuant to subdivision (a) of this section or subdivision (g) of Section 2001 is in control of or under common control with the disposing corporation, the principal terms of the sale must be approved by at least 90 percent of the voting power of the disposing corporation unless the disposition is to a domestic or foreign corporation or other business entity in consideration of the nonredeemable common shares or nonredeemable equity securities of the acquiring party or its parent.

(e) Subdivision (d) does not apply to any transaction if the Commissioner of Corporations, the Commissioner of Financial Institutions, the Insurance Commissioner or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142, Section 696.5 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 7. Section 1100 of the Corporations Code is amended to read:

1100. Any two or more corporations may be merged into one of those corporations. A corporation may merge with one or more domestic corporations (Section 167), foreign corporations (Section 171), or other business entities (Section 174.5) pursuant to this chapter. Mergers in which a foreign corporation but no other business entity is a constituent party are governed by Section 1108, and mergers in which an other business entity is a constituent party are governed by Section 1113.

SEC. 8. Section 1101 of the Corporations Code is amended to read:

1101. The board of each corporation which desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The agreement shall state all of the following:

(a) The terms and conditions of the merger.

(b) The amendments, subject to Sections 900 and 907, to the articles of the surviving corporation to be effected by the merger, if any. If any amendment changes the name of the surviving corporation the new name may be the same as or similar to the name of a disappearing domestic or foreign corporation, subject to subdivision (b) of Section 201.

(c) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(d) The manner of converting the shares of each of the constituent corporations into shares or other securities of the surviving corporation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving corporation, the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares or other securities of the surviving corporation, or that the shares are canceled without consideration.

(e) Other details or provisions as are desired, if any, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a constituent corporation or its parent or a wholly owned subsidiary of either in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding subdivision (d), except in a short-form merger, and in the merger of a corporation into its subsidiary in which it owns at least 90 percent of the outstanding shares of each class, the nonredeemable common shares or nonredeemable equity securities of a constituent corporation may be converted only into nonredeemable common shares of the surviving party or a parent party if a constituent corporation or its parent owns, directly or indirectly, prior to the merger shares of another constituent corporation representing more than 50 percent of the voting power of the other constituent corporation prior to the merger, unless all of the shareholders of the class consent and except as provided in Section 407.

SEC. 9. Section 1101.1 of the Corporations Code is amended to read:

1101.1. Subdivision (c) of Section 1113 and the last two sentences of Section 1101 do not apply to any transaction if the Commissioner of Corporations, the Commissioner of Financial Institutions, the Insurance Commissioner or, the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142 or Section 696.5, 5750, or 5802 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 9.5. Section 1109 of the Corporations Code is amended to read:

1109. Whenever a domestic or foreign corporation or domestic or foreign other business entity having any real property in this state

merges or consolidates with another domestic or foreign corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was incorporated or organized, and the laws of the state or place of incorporation or organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger or consolidation or certificate of ownership or certificate of merger vests in the surviving or consolidated party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of that disappearing party to the merger is located of a copy of the agreement of merger or consolidation or certificate of ownership or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger or consolidation is effected, shall evidence record ownership in the surviving or consolidated party to the merger, of all interest of the disappearing party to the merger in and to the real property located in that county.

SEC. 10. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation which desires to merge, and, if required the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.

(4) The manner of converting the shares of each constituent corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests or other securities of the surviving party, the agreement of merger shall state (i) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests or other securities of the surviving party, or (ii) that the shares are canceled without consideration.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or, if a domestic limited partnership is a party to the merger, Section 15678.2, or, if a domestic partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17551.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the nonredeemable common shares of a constituent corporation may be converted only into nonredeemable common shares of a surviving corporation or a parent party (Section 1200) or nonredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by such other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officer's certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the

Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles or organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto

shall be one entity. The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the

authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) A statement, by each party to the merger which is a domestic corporation not organized under this division, a foreign corporation, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.

(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The certificate of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger that is taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a

foreign partnership, at the office referred to in subdivision (a) of Section 15614 if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability

a general partner of a disappearing limited partnershipor or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 7.6 (commencing with Section 15679.1) of Chapter 3 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger

required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to this subdivision surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

(7) A certificate of satisfaction of the Franchise Tax Board for each disappearing party to the merger shall be filed when required by subdivision (g) or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 11. Section 1200 of the Corporations Code is amended to read:

1200. A reorganization (Section 181) or a share exchange tender offer (Section 183.5) shall be approved by the board of:

(a) Each constituent corporation in a merger reorganization;

(b) The acquiring corporation in an exchange reorganization;

(c) The acquiring corporation and the corporation whose property and assets are acquired in a sale-of-assets reorganization;

(d) The acquiring corporation in a share exchange tender offer (Section 183.5); and

(e) The corporation in control of any constituent or acquiring domestic or foreign corporation or other business entity under subdivision (a), (b) or (c) and whose equity securities are issued, transferred, or exchanged in the reorganization (a "parent party").

SEC. 12. Section 1201 of the Corporations Code is amended to read:

1201. (a) The principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of each class of each corporation the approval of whose board is required under Section 1200, except as provided in subdivision (b) and except that

(unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of the surviving or acquiring corporation or parent party shall be required if the rights, preferences, privileges and restrictions granted to or imposed upon that class of shares remain unchanged (subject to the provisions of subdivision (c)). For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if that corporation, or its shareholders immediately before the reorganization, or both, shall own (immediately after the reorganization) equity securities, other than any warrant or right to subscribe to or purchase those equity securities, of the surviving or acquiring corporation or a parent party (subdivision (d) of Section 1200) possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party. In making the determination of ownership by the shareholders of a corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase those shares.

(c) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of the surviving corporation in a merger reorganization if any amendment is made to its articles which would otherwise require that approval.

(d) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation or parent party having different rights, preferences, privileges or restrictions than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic corporation have different rights, preferences, privileges and restrictions within the meaning of the preceding sentence.

(e) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the affirmative vote of at least two-thirds of each class of the outstanding shares of any close corporation if the reorganization would result in their receiving shares of a corporation which is not a close corporation. However, the

articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(f) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger reorganization if holders of shares of that class receive interests of a surviving other business entity in the merger.

(g) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by all shareholders of any class or series if, as a result of the reorganization, the holders of that class or series become personally liable for any obligations of a party to the reorganization, unless all holders of that class or series have the dissenters' rights provided in Chapter 13 (commencing with Section 1300).

(h) Any approval required by this section may be given before or after the approval by the board. Notwithstanding approval required by this section, the board may abandon the proposed reorganization without further action by the shareholders, subject to the contractual rights, if any, of third parties.

SEC. 12.5. Section 5063.5 is added to the Corporations Code, to read:

5063.5. "Other business entity" means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, "general partnership" means a "partnership" as defined in subdivision (7) of Section 16101; "business trust" means a business organization formed as a trust; "real estate investment trust" means a "real estate investment trust" as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and "unincorporated association" has the meaning set forth in Section 24000.

SEC. 12.7. Section 5064.5 is added to the Corporations Code, to read:

5064.5. "Parent party" means the corporation in control of any constituent domestic or foreign corporation or other business entity and whose equity securities are issued, transferred, or exchanged in a merger pursuant to Section 6019.1 or 8019.1.

SEC. 13. Section 6010 of the Corporations Code is amended to read:

6010. (a) A public benefit corporation may merge with any domestic corporation, foreign corporation (Section 171), or other business entity (Section 5063.5). However, without the prior written consent of the Attorney General, a public benefit corporation may only merge with another public benefit corporation or a religious

corporation or a foreign nonprofit corporation the articles of which provide that its assets are irrevocably dedicated to charitable, religious, or public purposes.

(b) At least 20 days prior to consummation of any merger allowed by subdivision (a), the Attorney General must be provided with a copy of the proposed agreement of merger.

(c) Without the prior written consent of the Attorney General, when a merger occurs pursuant to subdivision (a), each member of a constituent corporation may only receive or keep a membership in the surviving corporation for or as a result of the member's membership in the constituent corporation.

SEC. 14. Section 6019.1 is added to the Corporations Code, to read:

6019.1. (a) Subject to the provisions of Sections 6010 and 9640, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations and foreign corporations (Section 5053) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 5810 and 5816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (b) of Section 5122 and subdivision (b) of

Section 9122, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships are to receive in exchange for the memberships, which cash, rights, securities, or other property may be in addition to, or in lieu of, shares, memberships, interests, or other securities of the surviving corporation or surviving other business entity.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(d) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(e) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(f) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class, if any, entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class entitled to vote, if any, which equaled or exceeded the vote required,

specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (h). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(g) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(h) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (f) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (f).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each

constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (f).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (f) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (f) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 15. Section 6020 of the Corporations Code is amended to read:

6020. (a) Upon merger pursuant to this chapter the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each and trust obligations upon the property of a disappearing party in the same manner as if incurred by the surviving party to the merger.

(b) All rights of creditors and all liens and trusts upon or arising from the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that the liens and trust obligations upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing corporation or other party to the merger may be prosecuted to judgment, which shall bind the surviving party to the merger, or the surviving party to the merger may be proceeded against or substituted in its place.

SEC. 16. Section 6021 of the Corporations Code is amended to read:

6021. Whenever a domestic or foreign corporation or other business entity (Section 5063.5) having any real property in this state merges with another domestic or foreign corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was organized, and the laws of the state or place of organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger vests in the surviving party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing party to the merger is located of either (a) a certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving party to the merger of all interest of that disappearing party to the merger in and to the real property located in that county.

SEC. 17. Section 6022 of the Corporations Code is amended to read:

6022. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving party to the merger.

SEC. 18. Section 8010 of the Corporations Code is amended to read:

8010. A mutual benefit corporation may merge with any domestic corporation, foreign corporation, foreign business corporation, or other business entity (Section 5063.5). However, a merger with a public benefit corporation or a religious corporation must have the prior written consent of the Attorney General.

SEC. 19. Section 8019.1 is added to the Corporations Code, to read:

8019.1. (a) Subject to the provisions of Section 8010, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations, foreign corporations (Sections 5053), and foreign business corporations (Section 5052) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 7810 and 7816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 7122, the same as or similar to the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of

either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic corporation, foreign corporation, and foreign business corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote required of each class, and, if applicable, by such other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a

domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity

is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign business corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation or foreign business corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915, or subdivision (a) of Section 17522, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign

jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 20. Section 8020 of the Corporations Code is amended to read:

8020. (a) Upon merger pursuant to this chapter the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each and trust obligations upon the property of a disappearing party in the same manner as if incurred by the surviving party to the merger.

(b) All rights of creditors and all liens and trusts upon or arising from the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that the liens and trust obligations upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing corporation or other party to the merger may be prosecuted to judgment, which shall bind the surviving party to the merger, or the surviving party to the merger may be proceeded against or substituted in its place.

SEC. 21. Section 8021 of the Corporations Code is amended to read:

8021. Whenever a domestic or foreign or foreign business corporation or other business entity (Section 5063.5) having any real property in this state merges with another domestic or foreign or foreign business corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was organized, and the laws of the state or place of organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger vests in the surviving party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing party to the merger is located of either (a) a certificate prescribed by the

Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving party to the merger of all interest of such disappearing party to the merger in and to the real property located in that county.

SEC. 22. Section 8022 of the Corporations Code is amended to read:

8022. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving party to the merger.

SEC. 23. Section 9640 of the Corporations Code is amended to read:

9640. (a) The provisions of Chapter 10 (commencing with Section 6010) of Part 2 apply to religious corporations except subdivision (a) of Section 6010 and Sections 6011 and 6012.

(b) A corporation may merge with any domestic corporation, foreign corporation, or other business entity (Section 5063.5). However, without the prior written consent of the Attorney General, a religious corporation may only merge with another religious corporation or with a public benefit corporation or a foreign nonprofit corporation the articles of which provide that its assets are irrevocably dedicated to charitable, religious or public purposes.

(c) The principal terms of the merger shall be approved by the members (Section 5034) of each class of each constituent corporation and by each other person or persons whose approval of an amendment of the articles is required by the articles or bylaws; and the approval by the members (Section 5034) or any other person or persons required by this section may be given before or after the approval by the board.

(d) The board of each corporation that desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons may be parties to the agreement of merger. The agreement shall state all of the following:

(1) The terms and conditions of the merger.

(2) The amendments, subject to Sections 5810 and 5816, to the articles of the surviving corporation to be effected by the merger, if any. If any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name of a disappearing corporation, subject to subdivision (b) of Section 9122.

(3) The amendments to the bylaws of the surviving corporation to be effected by the merger, if any.

(4) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(5) The manner, if any, of converting memberships of the constituent corporations into memberships of the surviving corporation.

(6) Any other details or provisions as are desired, if any.

SEC. 23.5. Section 12242.5 is added to the Corporations Code, to read:

12242.5. "Other business entity" means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, "general partnership" means a "partnership" as defined in subdivision (7) of Section 16101; "business trust" means a business organization formed as a trust; "real estate investment trust" means a "real estate investment trust" as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and "unincorporated association" has the meaning set forth in Section 24000.

SEC. 23.7. Section 12242.6 is added to the Corporations Code, to read:

12242.6. "Parent party" means the corporation in control of any constituent domestic or foreign corporation or other business entity and whose equity securities are issued, transferred, or exchanged in a merger pursuant to Section 12540.1.

SEC. 24. Section 12530 of the Corporations Code is amended to read:

12530. Any corporation may merge with another domestic corporation, foreign corporation, or other business entity (Section 12242.5). However, a merger with a public benefit corporation or a religious corporation must have the prior written consent of the Attorney General.

SEC. 25. Section 12540.1 is added to the Corporations Code, to read:

12540.1. (a) Any one or more corporations may merge with one or more other business entities (Section 12242.5). Subject to the provisions of Section 12530, one or more other domestic corporations or foreign corporations (Section 12237) may be parties to the merger.

Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation, other domestic corporation, foreign corporation, and other business entity which desires to merge shall approve an agreement of merger. The board and the members of each corporation which desires to merge shall approve (Sections 12222 and 12224) the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized.

The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 12242.6), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 12500 and 12507, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 12302, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of

either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 12224), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 12242.6) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a

domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent general partnership or foreign constituent limited liability company by one or more managers and by each foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign

other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) a copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 12214 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915 or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity without the necessity of the filing of a certificate of cancellation.

SEC. 25.2. Section 12550 of the Corporations Code is amended to read:

12550. (a) Upon merger pursuant to this chapter the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each and trust obligations upon the property of a disappearing party in the same manner as if incurred by the surviving party to the merger.

(b) All rights of creditors and all liens and trusts upon or arising from the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that these liens and trust obligations upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing corporation or other party to the merger may be prosecuted to judgment, which shall bind the surviving party to the merger, or the surviving party to the merger may be proceeded against or substituted in its place.

SEC. 25.4. Section 12551 of the Corporations Code is amended to read:

12551. Whenever a domestic or foreign corporation or other business entity (Section 12242.5) having any real property in this state merges with another domestic or foreign corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was organized, and the laws of the state or place of organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger vests in the surviving party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing party to the merger is located of either (a) a certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record

ownership in the surviving party to the merger of all interest of the disappearing party to the merger in and to the real property located in that county.

SEC. 25.6. Section 12552 of the Corporations Code is amended to read:

12552. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving party to the merger.

SEC. 26. Section 15679.1 of the Corporations Code is amended to read:

15679.1. (a) For purposes of this article, "reorganization" refers to any of the following:

(1) A merger pursuant to Article 7.5 (commencing with Section 15678.1).

(2) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity that is in control of the acquiring limited partnership) of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other limited partnership or other business entity.

(3) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity which is in control of the acquiring limited partnership) or for its debt securities (or debt securities of a limited partnership or other business entity which is in control of the acquiring limited partnership) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity.

(b) For purposes of this article, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited partnership or other business entity.

SEC. 26.5. Section 15679.1 of the Corporations Code is amended to read:

15679.1. (a) For purposes of this article, "reorganization" refers to any of the following:

(1) A conversion pursuant to Article 7.4 (commencing with Section 15677.1).

(2) A merger pursuant to Article 7.5 (commencing with Section 15678.1).

(3) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership

interests or equity securities of a partnership or other business entity that is in control of the acquiring limited partnership) of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other limited partnership or other business entity.

(4) The acquisition by one limited partnership in exchange in whole or in part for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity which is in control of the acquiring limited partnership) or for its debts securities (or debt securities of a limited partnership or other business entity which is in control of the acquiring limited partnership) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity.

(b) For purposes of this article, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited partnership or other business entity.

SEC. 27. Section 16901 of the Corporations Code is amended to read:

16901. In this article, the following terms have the following meanings:

(1) "Constituent other business entity" means any other business entity that is merged with or into one or more partnerships and includes a surviving other business entity.

(2) "Constituent partnership" means a partnership that is merged with or into one or more other partnerships or other business entities and includes a surviving partnership.

(3) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(4) "Disappearing partnership" means a constituent partnership that is not the surviving partnership.

(5) "Domestic" means organized under the laws of this state when used in relation to any partnership, other business entity, or person (other than an individual).

(6) "Foreign other business entity" means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(7) "Foreign partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country.

(8) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(9) "Limited liability company" means a limited liability company created under Title 2.5 (commencing with Section 17000), or comparable law of another jurisdiction.

(10) "Limited partner" means a limited partner in a limited partnership.

(11) "Limited partnership" means a limited partnership created under Chapter 3 (commencing with Section 15611), predecessor law, or comparable law of another jurisdiction.

(12) "Other business entity" means a limited partnership, limited liability company, corporation, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a partnership.

(13) "Partner" includes both a general partner and a limited partner.

(14) "Surviving other business entity" means an other business entity into which one or more partnerships are merged.

(15) "Surviving partnership" means a partnership into which one or more other partnerships or other business entities are merged.

SEC. 28. Section 16911 of the Corporations Code is amended to read:

16911. (a) Each partnership and other business entity which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by the number or percentage of partners specified for merger in the partnership agreement of the constituent partnership. If the partnership agreement fails to specify the required partner approval for merger of the constituent partnership, then the agreement of merger shall be approved by that number or percentage of partners specified by the partnership agreement to approve an amendment to the partnership agreement. However, if the merger effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, then the merger shall be approved by that greater number or percentage. If the partnership agreement contains no provision specifying the vote required to amend the partnership agreement, then the agreement of merger must be approved by all the partners. The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving partnership or surviving other business entity, and of each disappearing partnership and disappearing other business entity, and the agreement of merger may change the name of the surviving partnership, which new name may be the same as, or similar to, the name of a disappearing partnership.

(3) The manner of converting the partnership interests of each of the constituent partnerships into interests or other securities of the surviving partnership or surviving other business entity, and if

partnership interests of any of the constituent partnerships are not to be converted solely into interest or other securities of the surviving partnership or surviving other business entity, the cash, property, rights, interests, or securities which the holders of the partnership interest are to receive in exchange for the partnership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of interests or other securities of the surviving partnership or surviving other business entity, or that the partnership interests are canceled without consideration.

(4) Any other details or provisions as are required by the laws under which any constituent other business entity is organized.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) If the partnership is merging into a limited partnership, then in addition to the approval of the partners as set forth under subdivision (a), the agreement of merger must be approved by all partners who will become general partners of the surviving limited partnership upon the effectiveness of the merger.

(c) Notwithstanding its prior approval, an agreement of merger may be amended before the merger takes effect if the amendment is approved by the partners of each constituent partnership, in the same manner as required for approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The partners of a constituent partnership may in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent partnerships and constituent other business entities, if the abandonment is approved by the partners of the constituent partnership in the same manner as required for approval of the original agreement of merger.

(e) An agreement of merger approved in accordance with subdivision (a) may (1) effect any amendment to the partnership agreement of any domestic constituent partnership or (2) effect the adoption of a new partnership agreement for a domestic constituent partnership if it is the surviving partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger.

(f) The surviving partnership or surviving other business entity shall keep the agreement of merger at the principal place of business of the surviving entity if the surviving entity is a partnership or a foreign other business entity, at the office referred to in Section 1500 if the surviving entity is a domestic corporation, at the office referred to in subdivision (a) of Section 15614 if the surviving entity is a domestic limited partnership or at the office referred to in Section 17057 if the surviving entity is a domestic limited liability company and, upon the request of a partner of a constituent partnership or a holder of interests or other securities of a constituent other business

entity, the authorized person on behalf of the partnership or the surviving other business entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the surviving partnership or surviving other business entity, a copy of the agreement of merger. A waiver by a partner or holder of interests or other securities of the rights provided in this subdivision shall be unenforceable.

SEC. 29. Section 16914 of the Corporations Code is amended to read:

16914. (a) When a merger takes effect, all of the following apply:

(1) The separate existence of the disappearing partnerships and disappearing other business entities ceases and the surviving partnership or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property whether real, personal, or mixed, of each of the disappearing partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving partnership or surviving other business entity had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent partnerships and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving partnership or the surviving other business entity to the same extent as if the debt, liability or duty that gave rise to that lien had been incurred or contracted by it, provided that those liens upon the property of a disappearing partnership or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing partnership or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving partnership or surviving other business entity, or the surviving partnership or surviving other business entity may be proceeded against or be substituted in the disappearing partnership's or the disappearing other business entity's place.

(b) (1) Unless a certificate of merger has been filed to effect the merger, the surviving entity shall promptly notify the Secretary of State of the mailing address of its agent for service of process, its chief executive office, and of any change of address. To enforce an obligation of a limited partnership that has merged with a foreign entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against the surviving foreign other business entity, if the agent designated for the service of process for the entity is a natural person and cannot be found with due diligence or if the agent is a corporation and no person, to whom delivery may be made, can be found with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of the entity can be found after diligent search,

and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall give notice to the entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the entity, and the forwarding of the process, shall be competent and prima facie evidence of the matters stated therein.

(c) A partner of the surviving partnership or surviving limited partnership, a member of the surviving limited liability company, a shareholder of the surviving corporation, or a holder of equity securities of the surviving other business entity, is liable for all of the following:

(1) All obligations of a party to the merger for which that person was personally liable before the merger.

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity.

(3) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if that person is a limited partner, a shareholder in a corporation, or, unless expressly provided otherwise in the articles of organization or other constituent documents, a member of a limited liability company or a holder of equity securities in a surviving other business entity.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or surviving other business entity, the general partners of that party immediately before the effective date of the merger, to the extent that party was a partnership or a limited partnership, shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 16807 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a domestic disappearing partnership, who does not vote in favor of the merger and does not agree to become a partner, member, shareholder, or holder of interest or equity

securities of the surviving partnership or surviving other business entity shall have the right to dissociate from the partnership, as of the date the merger takes effect. Within 10 days after the approval of the merger by the partners as required under this article, each domestic disappearing partnership shall send notice of the approval of the merger to each partner that has not approved the merger, accompanied by a copy of Section 16701 and a brief description of the procedure to be followed under that section if the partner wishes to dissociate from the partnership. A partner that desires to dissociate from a disappearing partnership shall send written notice of that dissociation within 30 days after the date of the notice of the approval of the merger. The disappearing partnership shall cause the partner's interest in the entity to be purchased under Section 16701. The surviving entity is bound under Section 16702 by an act of a general partner dissociated under this subdivision, and the partner is liable under Section 16703 for transactions entered into by the surviving entity after the merger takes effect. The disassociation of a partner in connection with a merger pursuant to the terms of this subdivision shall not be deemed a wrongful disassociation under Section 16602.

SEC. 30. Section 16915 of the Corporations Code is amended to read:

16915. (a) In a merger involving only partnerships, or in a merger to which a domestic partnership and an other business entity is a party but in which no other domestic other business entity is a party, the surviving partnership or surviving foreign other business entity may file with the Secretary of State a statement that one or more partnerships have merged into the surviving partnership or surviving other business entity. A statement of merger shall contain the following:

(1) The name of each partnership or other business entity that is a party to the merger.

(2) The name of the surviving entity into which the other partnerships or other business entities were merged.

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any.

(4) Whether the surviving entity is a partnership or an other business entity, specifying the type of the entity.

(b) In a merger involving a domestic partnership in which a domestic other business entity is also a party, after approval of the merger by the constituent partnerships and any constituent other business entities, the constituent partnerships and constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State, but if the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 1113. The certificate of

merger shall be executed and acknowledged by each domestic constituent partnership by two partners (unless a lesser number is provided in the partnership agreement) and by each foreign constituent partnership by one or more partners, and by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent partnerships and constituent other business entities, separately identifying the disappearing partnerships and disappearing other business entities and the surviving partnership or surviving other business entity.

(2) If a vote of the partners was required under Section 16911, a statement that the principal terms of the agreement of merger were approved by a vote of the partners, which equaled or exceeded the vote required.

(3) If the surviving entity is a domestic partnership and not an other business entity, any change to the information set forth in any filed statement of partnership authority of the surviving partnership resulting from the merger, including any change in the name of the surviving partnership resulting from the merger. The filing of a certificate of merger setting forth any changes to any filed statement of partnership authority of the surviving partnership shall have the effect of the filing of a certificate of amendment of the statement of partnership authority by the surviving partnership, and the surviving partnership need not file a certificate of amendment under Section 16015 to reflect those changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign partnership, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized.

(c) A statement of merger or a certificate of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a cancellation for each disappearing partnership of any statement of partnership authority filed by it.

SEC. 31. Section 16916 of the Corporations Code is amended to read:

16916. (a) Whenever a domestic or foreign partnership or other business entity having any real property in this state merges with

another partnership or other business entity pursuant to the laws of this state or of the state or place in which any constituent partnership or constituent other business entity was organized, and the laws of the state or place of organization (including this state) of any disappearing partnership or disappearing other business entity provide substantially that the making and filing of a statement of merger, agreement of merger or certificate of merger vests in the surviving partnership or surviving other business entity all the real property of any disappearing partnership and disappearing other business entity, the filing for record in the office of the county record of any county in this state in which any of the real property of the disappearing partnership or disappearing other business entity is located of either (1) a certificate of merger or agreement of merger certified by the Secretary of State, or other certificate prescribed by the Secretary of State, or (2) a copy of the statement of merger, agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving partnership or surviving other business entity of all interest of that disappearing partnership or disappearing other business entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subdivision (c) of Section 16105, stating the name of a partnership or other business entity that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by Section 16915, operates with respect to the partnerships or other business entities named to the extent provided in subdivision (a).

(c) Recording of the certificate of merger in accordance with subdivision (a) shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed.

SEC. 32. Section 17600 of the Corporations Code is amended to read:

17600. (a) For purposes of this chapter, "reorganization" refers to any of the following:

(1) A merger pursuant to Chapter 12 (commencing with Section 17550).

(2) The acquisition by one limited liability company, in exchange, in whole or in part, for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company), of membership interests or equity securities of another limited liability company or other business entity if, immediately after the acquisition, the acquiring limited liability company has control of the other limited liability company or other business entity.

(3) The acquisition by one limited liability company in exchange in whole or in part for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) or for its debt securities (or debt securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) that are not adequately secured and that have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited liability company or other business entity.

(b) For purposes of this chapter, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited liability company or other business entity.

SEC. 32.5. Section 17600 of the Corporations Code is amended to read:

17600. (a) For purposes of this chapter, "reorganization" refers to any of the following:

(1) A conversion pursuant to Chapter 11.5 (commencing with Section 17540.1).

(2) A merger pursuant to Chapter 12 (commencing with Section 17550).

(3) The acquisition by one limited liability company in exchange, in whole or in part, for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company), of membership interests or equity securities of another limited liability company or other business entity if, immediately after the acquisition, the acquiring limited liability company has control of the other limited liability company or other business entity.

(4) The acquisition by one limited liability company in exchange in whole or in part for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) or for its debt securities (or debt securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) that are not adequately secured and that have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited liability company or other business entity.

(b) For purposes of this chapter, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited liability company or other business entity.

SEC. 33. Section 26.5 of this bill incorporates amendments to Section 15679.1 of the Corporations Code proposed by both this bill

and AB 197. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 15679.1 of the Corporations Code, and (3) this bill is enacted after AB 197, in which case Section 26 of this bill shall not become operative.

SEC. 34. Section 32.5 of this bill incorporates amendments to Section 17600 of the Corporations Code proposed by both this bill and AB 197. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 17600 of the Corporations Code, and (3) this bill is enacted after AB 197, in which case Section 32 of this bill shall not become operative.

CHAPTER 438

An act to amend Section 417.25 of, and to add Section 417.26 to, the Penal Code, relating to lasers.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 417.25 of the Penal Code is amended to read:

417.25. (a) Every person who, except in self-defense, aims or points a laser scope, as defined in subdivision (b), or a laser pointer, as defined in subdivision (c), at another person in a threatening manner with the specific intent to cause a reasonable person fear of bodily harm is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 30 days. For purposes of this section, the laser scope need not be attached to a firearm.

(b) As used in this section, "laser scope" means a portable battery-powered device capable of being attached to a firearm and capable of projecting a laser light on objects at a distance.

(c) As used in this section, "laser pointer" means any hand held laser beam device or demonstration laser product that emits a single point of light amplified by the stimulated emission of radiation that is visible to the human eye.

SEC. 2. Section 417.26 is added to the Penal Code, to read:

417.26. (a) Any person who aims or points a laser scope as defined in subdivision (b) of Section 417.25, or a laser pointer, as defined in subdivision (c) of that section, at a peace officer with the specific intent to cause the officer apprehension or fear of bodily harm and who knows or reasonably should know that the person at whom he or she is aiming or pointing is a peace officer, is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not exceeding six months.

(b) Any person who commits a second or subsequent violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year.

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.

CHAPTER 439

An act to amend Section 40106 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 40106 of the Public Resources Code is amended to read:

40106. (a) "Biomass conversion" means the controlled combustion, when separated from other solid waste and used for producing electricity or heat, of the following materials:

(1) Agricultural crop residues.

(2) Bark, lawn, yard, and garden clippings.

(3) Leaves, silvicultural residue, and tree and brush pruning.

(4) Wood, wood chips, and wood waste.

(5) Nonrecyclable pulp or nonrecyclable paper materials.

(b) "Biomass conversion" does not include the controlled combustion of recyclable pulp or recyclable paper materials, or materials that contain sewage sludge, industrial sludge, medical waste, hazardous waste, or either high-level or low-level radioactive waste.

(c) For purposes of this section, "nonrecyclable pulp or nonrecyclable paper materials" means either of the following, as determined by the board:

(1) Paper products or fibrous materials that cannot be technically, feasibly, or legally recycled because of the manner in which the product or material has been manufactured, treated, coated, or constructed.

(2) Paper products or fibrous materials that have become soiled or contaminated and as a result cannot be technically, feasibly, or legally recycled.

CHAPTER 440

An act to amend Sections 3303, 3321, and 3325 of the Business and Professions Code, relating to hearing aid dispensers, and making an appropriation therefor.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 3303 of the Business and Professions Code is amended to read:

3303. "Committee," as used in this chapter, means the Director of Consumer Affairs.

SEC. 2. Section 3321 of the Business and Professions Code is amended to read:

3321. (a) There is within the jurisdiction of the department a Hearing Aid Dispensers Advisory Commission. The commission shall consist of seven members, three of whom shall be licensed hearing aid dispensers and four of whom shall be public members. Only one of the licensed hearing aid dispenser members may also be licensed as an audiologist or otolaryngologist.

(b) Each member of the commission shall hold office for a term of four years. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(c) Vacancies occurring shall be filled by appointment for the unexpired term. Each member of the commission shall be eligible for reappointment in the discretion of the appointing power, provided that reappointed hearing aid dispenser members shall, at the time of the reappointment, hold a valid license under this chapter. No person may serve as a member of the commission for more than two full consecutive terms.

(d) The Governor shall appoint two of the public members and the three licensed members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. When appointing the public members, consideration shall be given to appointing a hearing-impaired individual. If an otolaryngologist is not appointed as one of the three licensed hearing aid dispenser members, consideration shall also be given to appointing a licensed physician or surgeon as a public member.

(e) Every member of the commission shall receive per diem and expenses as provided in Sections 103 and 113.

(f) The commission shall perform those duties and functions that have been delegated to it by the director, however, the director may retain full authority for enforcing the provisions of this chapter. The director shall not delegate his or her authority to receive and process complaints against licensees, or to investigate, prosecute, or discipline licensees. The director also shall not delegate his or her authority to (1) review the qualifications of individual applicants for licensure, (2) accept or deny applications of individuals for license examination, (3) administer license examinations, (4) hear appeals from individuals related to their performance on license examinations, or (5) participate in any other way in the issuance of licenses to individual applicants. The director shall authorize the commission to advise him or her regarding general issues relating to the qualifications and examination of applicants for licensure.

(g) The director may authorize the commission to do any or all of the following: (1) assist the director in the examination of candidates for a license provided under this chapter, (2) after investigation, evaluate and make recommendations to the director regarding potential violations of this chapter, and (3) investigate, assist, and make recommendations to the director regarding the regulation of hearing aid dispensing in this state.

(h) The director, or his or her designee, shall meet with the commission quarterly and shall consult with the commission prior to the introduction of any legislation or regulations proposed by the department relating to hearing aid dispensing in this state.

SEC. 3. Section 3325 of the Business and Professions Code is amended to read:

3325. Notice of each meeting of the commission shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Part 1 of Division 3 of Title 2 of the Government Code).

CHAPTER 441

An act to amend Sections 17005.6, 17200, 17400, 17403.1, 17403.2, 17403.3, and 17403.4 of, to amend and renumber Section 17005.5 of, to add Sections 17004.5, 17005.5, and 17215 to, and to repeal Section 17401 of, the Financial Code, relating to escrow.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California's electronic technology and Internet related industries have been critical sectors of California's economic resurgence.

(2) California is the leading high technology state in the nation and is the home to many electronic technology and Internet related companies that generate substantial employment and state revenues.

(3) Electronic commerce is predicted to become a critical component of future economic development.

(4) It is important to California's continued economic health that state government work with California's electronic technology and Internet industries to promote an industry friendly environment so as to foster further innovation and development for the benefit of the people of this state.

(b) Therefore, it is the intent of the Legislature that state government recognize the unique and rapid technological advances changing electronic commerce and facilitate the development of Internet related commerce, and, while maintaining consumer protection as its highest priority, work to resolve issues presented by laws and regulations that may hamper the development of electronic commerce.

SEC. 2. Section 17004.5 is added to the Financial Code, to read:

17004.5. "Internet escrow agent" means any person engaged in the business of receiving escrows for deposit or delivery over the Internet.

SEC. 3. Section 17005.5 of the Financial Code is renumbered to read:

17005.3. "Person subject to this division" means any person undertaking the performance of escrow agent services. Unless specifically exempted, as in Section 17006, however, this definition shall not be used to exclude anyone.

SEC. 4. Section 17005.5 is added to the Financial Code, to read:

17005.5. "Within this state" means any activity of a person relating to receiving escrows for deposit or delivery that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state, whether from inside or outside this state and whether the offer was made inside or outside this state.

SEC. 5. Section 17005.6 of the Financial Code is amended to read:

17005.6. Except as provided for in Section 17004, "escrow agent" as used in this division includes joint control agents and Internet escrow agents.

SEC. 6. Section 17200 of the Financial Code is amended to read:

17200. It shall be unlawful for any person to engage in business as an escrow agent within this state except by means of a corporation duly organized for that purpose licensed by the commissioner as an escrow agent.

SEC. 7. Section 17215 is added to the Financial Code, to read:

17215. Whenever the commissioner issues a license or order under this division, the commissioner may impose conditions that are necessary and appropriate to carry out the provisions and purposes of this division and, with respect to Internet escrow agents, are also consistent with the intent of the Legislature.

SEC. 8. Section 17400 of the Financial Code is amended to read:

17400. The commissioner may from time to time make, amend, and rescind the rules, forms, and orders that are necessary to carry out the provisions of this division, and define any terms, whether or not used in this division, insofar as the definitions are not inconsistent with the provisions of this division. For the purpose of rules and forms, the commissioner may, among other things, classify persons and matters within the commissioner's jurisdiction and may prescribe different requirements for different classes. The commissioner may, in the commissioner's discretion, waive any requirement of any rule or form in situations where in his or her opinion the requirement is not necessary in the public interest or for the protection of the public.

SEC. 9. Section 17401 of the Financial Code is repealed.

SEC. 10. Section 17403.1 of the Financial Code is amended to read:

17403.1. No person subject to this division shall describe as an escrow, whether orally, in writing, or electronically, any transaction that is not defined as such in Section 17003.

SEC. 11. Section 17403.2 of the Financial Code is amended to read:

17403.2. (a) No person subject to this division shall solicit or accept an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after signing or initialing of the escrow instruction or amended or supplemental escrow instruction, nor permit any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction, unless the addition, deletion or alteration is signed or initialed by all persons who had signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion or alteration.

(b) In addition to subdivision (a), no Internet escrow agent subject to this division shall solicit or accept electronically over the Internet an escrow instruction or amended or supplemental escrow

instruction containing any blank to be filled in after executing that escrow instruction or amended or supplemental escrow instruction, nor permit any person to electronically, over the Internet, make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction, unless that addition, deletion or alteration is executed by all persons who had executed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion, or alteration.

SEC. 12. Section 17403.3 of the Financial Code is amended to read:

17403.3. (a) At the time of execution a copy of each escrow instruction or amended or supplemental escrow instruction shall be delivered to all persons executing the same.

(b) Internet escrow agents shall deliver electronically over the Internet a copy of each executed escrow instruction or amended or supplemental escrow instruction to all persons executing the same. In the event a person is not able to electronically receive the instructions, the Internet escrow agent shall mail a true and correct copy of the instructions to the person within 24 hours of execution.

SEC. 13. Section 17403.4 of the Financial Code is amended to read:

17403.4. All written escrow instructions and all escrow instructions transmitted electronically over the Internet executed by a buyer or seller, whether prepared by a person subject to this division or by a person exempt from this division under Section 17006, shall contain a statement in not less than 10-point type which shall include the license name and the name of the department issuing the license or authority under which the person is operating. This section shall not apply to supplemental escrow instructions or modifications to escrow instructions.

This section shall become operative on July 1, 1993.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 442

An act to amend Section 53895 of the Government Code, and to amend Sections 33080.1, 33080.2, 33334.12, and 33672.5 of, and to add Section 33121.5 to, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 53895 of the Government Code is amended to read:

53895. (a) An officer of a local agency who fails or refuses to make and file his or her report within 20 days after receipt of a written notice of the failure from the Controller shall forfeit to the state:

(1) One thousand dollars ($1,000), in the case of a local agency with total revenue, in the prior year, of less than one hundred thousand dollars ($100,000), as reported in the Controller's annual financial reports.

(2) Two thousand five hundred dollars ($2,500) in the case of a local agency with total revenue, in the prior year, of at least one hundred thousand dollars ($100,000) but less than two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(3) Five thousand dollars ($5,000) in the case of a local agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(b) Upon the request of the Controller, the Attorney General shall prosecute an action for the forfeiture in the name of the people of the State of California.

SEC. 2. Section 33080.1 of the Health and Safety Code is amended to read:

33080.1. Every redevelopment agency shall submit the final report of any audit undertaken by any other local, state, or federal government entity to its legislative body within 30 days of receipt of that audit report. In addition, every redevelopment agency shall present an annual report to its legislative body within six months of the end of the agency's fiscal year. The annual report shall contain all of the following:

(a) (1) An independent financial audit report for the previous fiscal year. "Audit report" means an examination of, and opinion on, the financial statements of the agency which present the results of the operations and financial position of the agency, including all financial activities with moneys required to be held in a separate Low and Moderate Income Housing Fund pursuant to Section 33334.3. This audit shall be conducted by a certified public accountant or public accountant, licensed by the State of California, in accordance with Government Auditing Standards adopted by the Comptroller General of the United States. The audit report shall meet, at a minimum, the audit guidelines prescribed by the Controller's office pursuant to Section 33080.3 and also include a report on the agency's compliance with laws, regulations, and administrative requirements

governing activities of the agency, and a calculation of the excess surplus in the Low and Moderate Income Housing Fund as defined in subdivision (g) of Section 33334.12.

(2) However, the legislative body may elect to omit from inclusion in the audit report any distinct activity of the agency that is funded exclusively by the federal government and that is subject to audit by the federal government.

(b) A fiscal statement for the previous fiscal year that contains the information required pursuant to Section 33080.5.

(c) A description of the agency's activities in the previous fiscal year affecting housing and displacement that contains the information required by Sections 33080.4 and 33080.7.

(d) A description of the agency's progress, including specific actions and expenditures, in alleviating blight in the previous fiscal year.

(e) A list of, and status report on, all loans made by the redevelopment agency that are fifty thousand dollars ($50,000) or more, that in the previous fiscal year were in default, or not in compliance with the terms of the loan approved by the redevelopment agency.

(f) A description of the total number and nature of the properties that the agency owns and those properties the agency has acquired in the previous fiscal year.

(g) Any other information that the agency believes useful to explain its programs, including, but not limited to, the number of jobs created and lost in the previous fiscal year as a result of its activities.

SEC. 3. Section 33080.2 of the Health and Safety Code is amended to read:

33080.2. The legislative body shall review any report submitted pursuant to Section 33080.1 and take any action it deems appropriate on that report no later than the first meeting of the legislative body occurring more than 21 days from the receipt of the report.

SEC. 3.5. Section 33080.2 of the Health and Safety Code is amended to read:

33080.2. (a) When the agency presents the annual report to the legislative body pursuant to Section 33080.1, the agency shall inform the legislative body of any major violations of this part based on the independent financial audit report. The agency shall inform the legislative body that the failure to correct a major violation of this part may result in the filing of an action by the Attorney General pursuant to Section 33080.8.

(b) The legislative body shall review any report submitted pursuant to Section 33080.1 and take any action it deems appropriate on that report no later than the first meeting of the legislative body occurring more than 21 days from the receipt of the report.

SEC. 4. Section 33121.5 is added to the Health and Safety Code, to read:

33121.5. When a decision, determination, or other action by the agency or legislative body is required by this part, neither the agency nor the legislative body shall delegate the obligation to decide, determine, or act to another entity unless a provision of this part specifically provides for that delegation.

SEC. 5. Section 33334.12 of the Health and Safety Code is amended to read:

33334.12. (a) (1) Upon failure of the agency to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within one year from the date the moneys become excess surplus, as defined in paragraph (1) of subdivision (g), the agency shall do either of the following:

(A) Disburse voluntarily its excess surplus to the county housing authority or to another public agency exercising housing development powers within the territorial jurisdiction of the agency in accordance with subdivision (b).

(B) Expend or encumber its excess surplus within two additional years.

(2) If an agency, after three years has elapsed from the date that the moneys become excess surplus, has not expended or encumbered its excess surplus, the agency shall be subject to sanctions pursuant to subdivision (e), until the agency has expended or encumbered its excess surplus plus an additional amount, equal to 50 percent of the amount of the excess surplus that remains at the end of the three-year period. The additional expenditure shall not be from the agency's Low and Moderate Income Housing Fund, but shall be used in a manner that meets all requirements for expenditures from that fund.

(b) The housing authority or other public agency to which the money is transferred shall utilize the moneys for the purposes of, and subject to the same restrictions that are applicable to, the redevelopment agency under this part, and for that purpose may exercise all of the powers of a housing authority under Part 2 (commencing with Section 34200) to an extent not inconsistent with these limitations.

(c) Notwithstanding Section 34209 or any other provision of law, for the purpose of accepting a transfer of, and using, moneys pursuant to this section, the housing authority of a county or other public agency may exercise its powers within the territorial jurisdiction of a city redevelopment agency located in that county.

(d) The amount of excess surplus that shall be transferred to the housing authority or other public agency because of a failure of the redevelopment agency to expend or encumber excess surplus within one year shall be the amount of the excess surplus that is not so expended or encumbered. The housing authority or other public agency to which the moneys are transferred shall expend or encumber these moneys for authorized purposes not later than three years after the date these moneys were transferred from the Low and Moderate Income Housing Fund.

(e) (1) Until a time when the agency has expended or encumbered excess surplus moneys pursuant to subdivision (a), the agency shall be prohibited from encumbering any funds or expending any moneys derived from any source, except that the agency may encumber funds and expend moneys to pay the following obligations, if any, that were incurred by the agency prior to three years from the date the moneys became excess surplus:

(A) Bonds, notes, interim certificates, debentures, or other obligations issued by an agency, whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33640).

(B) Loans or moneys advanced to the agency, including, but not limited to, loans from federal, state, or local agencies, or a private entity.

(C) Contractual obligations which, if breached, could subject the agency to damages or other liabilities or remedies.

(D) Obligations incurred pursuant to Section 33445.

(E) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

(F) Obligations incurred pursuant to Section 33401.

(G) An amount, to be expended for the operation and administration of the agency, that may not exceed 75 percent of the amount spent for those purposes in the preceding fiscal year.

(2) This subdivision shall not be construed to prohibit the expenditure of excess surplus funds or other funds to meet the requirement in paragraph (2) of subdivision (a) that the agency spend or encumber excess surplus funds, plus an amount equal to 50 percent of excess surplus, prior to spending or encumbering funds for any other purpose.

(f) Nothing in this section shall be construed to limit any authority a redevelopment agency may have under other provisions of this part to contract with a housing authority for increasing or improving the community's supply of low- and moderate-income housing.

(g) For purposes of this section:

(1) "Excess surplus" means any unexpended and unencumbered amount in an agency's Low and Moderate Income Housing Fund that exceeds the greater of one million dollars ($1,000,000) or the aggregate amount deposited into the Low and Moderate Income Housing Fund pursuant to Sections 33334.2 and 33334.6 during the agency's preceding four fiscal years. The first fiscal year to be included in this computation is the 1989–90 fiscal year, and the first date on which an excess surplus may exist is July 1, 1994.

(2) Moneys shall be deemed encumbered if committed pursuant to a legally enforceable contract or agreement for expenditure for purposes specified in Section 33334.2 or 33334.3.

(3) (A) For purposes of determining whether an excess surplus exists, it is the intent of the Legislature to give credit to agencies which convey land for less than fair market value, on which low- and moderate-income housing is built or is to be built if at least 49 percent

of the units developed on the land are available at affordable housing cost to lower income households for at least the time specified in subdivision (e) of Section 33334.3, and otherwise comply with all of the provisions of this division applicable to expenditures of moneys from a low- and moderate-income housing fund established pursuant to Section 33334.3. Therefore, for the sole purpose of determining the amount, if any, of an excess surplus, an agency may make the following calculation: if an agency sells, leases, or grants land acquired with moneys from the Low and Moderate Income Housing Fund, established pursuant to Section 33334.3, for an amount which is below fair market value, and if at least 49 percent of the units constructed or rehabilitated on the land are affordable to lower income households, as defined in Section 50079.5, the difference between the fair market value of the land and the amount the agency receives may be subtracted from the amount of moneys in an agency's Low and Moderate Income Housing Fund.

(B) If taxes that are deposited in the Low and Moderate Income Housing Fund are used as security for bonds or other indebtedness, the proceeds of the bonds or other indebtedness, and income and expenditures related to those proceeds, shall not be counted in determining whether an excess surplus exists. The unspent portion of the proceeds of bonds or other indebtedness, and income related thereto, shall be excluded from the calculation of the unexpended and unencumbered amount in the Low and Moderate Income Housing Fund when determining whether an excess surplus exists.

(C) Nothing in this subdivision shall be construed to restrict the authority of an agency provided in any other provision of this part to expend funds from the Low and Moderate Income Housing Fund.

(D) The department shall develop and periodically revise the methodology to be used in the calculation of excess surplus as required by this section. The director shall appoint an advisory committee to advise in the development of this methodology. The advisory committee shall include department staff, affordable housing advocates, and representatives of the California Redevelopment Association, the California Society of Certified Public Accountants, the Controller, and any other authorities or persons interested in the field that the director deems necessary and appropriate.

(h) Communities in which an agency has disbursed excess surplus funds pursuant to this section shall not disapprove a low- or moderate-income housing project funded in whole or in part by the excess surplus funds if the project is consistent with applicable building codes and the land use designation specified in any element of the general plan as it existed on the date the application was deemed complete. A local agency may require compliance with local development standards and policies appropriate to and consistent with meeting the quantified objectives relative to the development of housing, as required in housing elements of the community

pursuant to subdivision (b) of Section 65583 of the Government Code.

(i) Notwithstanding subdivision (a), any agency that has funds that become excess surplus on July 1, 1994, shall have, pursuant to subdivision (a), until January 1, 1995, to decide to transfer the funds to a housing authority or other public agency, or until January 1, 1997, to expend or encumber those funds, or face sanctions pursuant to subdivision (e).

SEC. 6. Section 33672.5 of the Health and Safety Code is amended to read:

33672.5. (a) Upon the written request of a redevelopment agency for the purpose of assisting the agency, the county auditor or other officer responsible for allocation of tax revenues pursuant to Section 33670 shall prepare a statement each fiscal year, commencing with the 1992–93 fiscal year, for each redevelopment project area and each area added to a redevelopment project area by amendment, which provides for all the following:

(1) The total taxable assessed value of secured, unsecured, and state-assessed railroad and nonoperating, nonunitary property.

(2) The total taxable assessed value used by the county auditor to determine the division of taxes required by subdivision (a) of Section 33670.

(3) The total taxable assessed value used by the county auditor to determine the division of taxes required by subdivision (b) of Section 33670.

(4) The estimated amount of taxes calculated pursuant to subdivision (b) of Section 33670, as adjusted by subdivision (e) of Section 33670 and subdivision (a) of Section 33676. The statement shall specify the gross amount of tax-increment revenue allocated to the agency and any payments to other taxing entities that are deducted from the gross amount allocated.

(5) The estimated amount of taxes to be allocated pursuant to subdivisions (c) and (d) of Section 100 of the Revenue and Taxation Code.

(b) If requested to provide a statement pursuant to subdivision (a), the county auditor shall deliver each statement to the respective redevelopment agencies receiving property tax revenue on or before November 30 of each year.

(c) (1) Upon the request of a redevelopment agency pursuant to subdivision (a), and concurrently with the disbursement of those property tax revenues, the county auditor shall prepare a statement which provides the amount of disbursement made pursuant to all of the following:

(A) Section 33670.

(B) Section 100 of the Revenue and Taxation Code.

(C) Supplemental property tax revenues allocated pursuant to Sections 75 to 75.80 of the Revenue and Taxation Code, inclusive.

(2) The statement provided pursuant to this subdivision shall also include corrections, updates, or adjustments, if any, to the property tax revenue amounts and taxable assessed values reported pursuant to subdivision (a) of Section 33670.

(d) The county auditor shall also provide to a redevelopment agency, no later than 30 days after the receipt of a written request from that agency, information or clarification with respect to any statement issued pursuant to this section.

(e) If any redevelopment agency requests a statement or information pursuant to this section, the agency shall reimburse the county auditor for all actual and reasonable costs incurred.

SEC. 7. The Legislature finds and declares that Section 33121.5 of the Health and Safety Code, as added by Section 4 of this act, is declaratory of, and does not constitute a change in, existing law.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 33080.2 of the Health and Safety Code proposed by both this bill and SB 497. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 33080.2 of the Health and Safety Code, and (3) this bill is enacted after SB 497, in which case Section 3 of this bill shall not become operative.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 443

An act to add and repeal Article 1.5 (commencing with Section 7063) of Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Article 1.5 (commencing with Section 7063) is added to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.5. Public Disclosure of Tax Delinquencies

7063. (a) Notwithstanding any other provision of law, the board shall make available as a matter of public record each quarter a list of the 12 largest tax delinquencies in excess of one million dollars ($1,000,000) under this part. For purposes of compiling the list, a tax delinquency means an amount owing the board which is all of the following:

(1) Based on a determination made under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511) of Chapter 5 deemed final pursuant to Article 5 (commencing with Section 6561) of Chapter 5, or that is "due and payable" under Article 4 (commencing with Section 6536) of Chapter 5.

(2) Recorded as a notice of state tax lien pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, in any county recorder's office in this state.

(3) For an amount of tax delinquent for more than 90 days for which the person has received tax or tax reimbursement, including any additions, penalties, or interest.

(b) For purposes of the list, a tax delinquency does not include any of the following and may not be included on the list:

(1) A delinquency that is under litigation in a court of law.

(2) A delinquency under which the person has filed a petition for redetermination.

(3) A delinquency for which payment arrangements have been agreed to by both the taxpayer and the board and the taxpayer is in compliance with the arrangement.

(4) A delinquency under which the taxpayer has filed for bankruptcy protection pursuant to the United States Bankruptcy Code.

(c) Each quarterly list shall, with respect to each delinquency, include all the following:

(1) The name of the person or persons liable for payment of the tax and that person's or persons' last known address.

(2) The amount of delinquency, including any applicable interest or penalties.

(3) The length of time for which payment has been delinquent.

(4) The type of tax that is delinquent.

Prior to making a tax delinquency a matter of public record as required by this section, the board shall provide a preliminary written notice to the person or persons liable for the tax by first-class mail, return receipt required. If within 30 days after receipt of the notice of receipt, the person or persons do not remit the amount due or make arrangements with the board for payment of the amount due, the tax delinquency shall be included on the list.

(d) The quarterly list described in subdivision (a) shall include the following:

(1) The telephone number and address of the board office to contact if a person believes placement of his or her name on the list is in error.

(2) The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.

(e) As promptly as feasible, but no later than 5 business days from the occurrence of any of the following, the board shall remove that taxpayer's name from the list of tax delinquencies:

(1) Tax delinquencies for which the person liable for the tax has contacted the board and resolution of the delinquency is being arranged or has been arranged.

(2) Tax delinquencies for which the board has verified that an active bankruptcy proceeding has been initiated.

(3) Tax delinquencies for which the board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount or amounts.

(4) Tax delinquencies that the board has determined to be uncollectible.

(f) A person whose delinquency appears on the quarterly list, and who satisfies that delinquency in whole or in part, may request the board to include in its quarterly list any payments that person made to satisfy the delinquency. Upon receipt of that request, the board shall include those payments on the list as promptly as feasible.

(g) This section 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.

CHAPTER 444

An act to amend Sections 1985.3, 1985.6, and 2020 of the Code of Civil Procedure, to amend Sections 1560, 1561, and 1563 of the Evidence Code, and to amend Section 4055.2 of the Labor Code, relating to confidentiality.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. 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, any copy of books, documents, other writings, or electronic data pertaining to a

consumer and which are maintained by any "witness" which is a physician, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, medical center, clinic, radiology or MRI center, clinical or diagnostic laboratory, 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, secondary school, or postsecondary school as described in Section 76244 of the Education Code.

(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) 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, if any, and of the notice described in subdivision (e), and proof of service as indicated in paragraph (1) of subdivision (c). 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, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time, as provided in paragraph (1) of subdivision (d) of Section 2020, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit, if any, 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 but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any other consumer or nonparty whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party the witness, and the deposition officer, a written objection that cites 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 the motion has been brought by consumer, or after receipt of a written objection from 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. 2. 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, other writings, or electronic data 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) 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), and proof of service as provided in paragraph (1) of subdivision (c). 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, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time, as provided in paragraph (1) of subdivision (d) of Section 2020, to locate and produce the records or copies thereof.

(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 but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, and the deposition officer, the witness a written objection that cites 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 the motion has been brought by an employee, or after receipt of a written objection from 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. 3. Section 2020 of the Code of Civil Procedure is amended to read:

2020. (a) The method for obtaining discovery within the state from one who is not a party to the action is an oral deposition under Section 2025, a written deposition under Section 2028, or a deposition for production of business records and things under subdivisions (d) and (e). Except as provided in paragraph (1) of subdivision (h) of Section 2025, the process by which a nonparty is required to provide discovery is a deposition subpoena. The deposition subpoena may command any of the following:

(1) Only the attendance and the testimony of the deponent, under subdivision (c).

(2) Only the production of business records for copying, under subdivision (d).

(3) Both the attendance and the testimony of the deponent, as well as the production of business records, other documents, and tangible things, under subdivision (e).

Except as modified in this section, the provisions of Chapter 2 (commencing with Section 1985), and of Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, apply to a deposition subpoena.

(b) The clerk of the court in which the action is pending shall issue a deposition subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. In lieu of the court-issued deposition subpoena, an attorney of record for any party may sign and issue a deposition subpoena; the deposition subpoena in that case need not be sealed, a copy may be served on the nonparty, and the attorney may retain the original.

(c) A deposition subpoena that commands only the attendance and the testimony of the deponent shall specify the time when and the place where the deponent is commanded to attend for the deposition. It shall set forth a summary of (1) the nature of a deposition, (2) the rights and duties of the deponent, and (3) the

penalties for disobedience of a deposition subpoena described in subdivision (h). If the deposition will be recorded by videotape under paragraph (2) of subdivision (*l*) of Section 2025, the deposition subpoena shall state that it will be recorded in that manner. If the deponent is an organization, the deposition subpoena shall describe with reasonable particularity the matters on which examination is requested, and shall advise that organization of its duty to make the designation of employees or agents who will attend described in subdivision (d) of Section 2025.

(d) (1) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item; however, specific information identifiable only to the deponent's records system, such as a policy number or the date the consumer interacted with the witness, shall not be required. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with paragraph (4) on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

(2) If, under Section 1985.3 or 1985.6, the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or subdivision (b) of Section 1985.6, as applicable, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3, or paragraph (2) of subdivision (c) of Section 1985.6, as applicable.

(3) The officer for a deposition seeking discovery only of business records for copying under this subdivision shall be a professional photocopier registered under Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter under Section 22451 of the Business and Professions Code. This deposition officer shall not be financially interested in the action, or a relative or employee of any attorney of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the date of production or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(4) Unless directed to make the records available for inspection or copying by the subpoenaing party's attorney or a representative of that attorney at the witness' business address under subdivision (e)

of Section 1560 of the Evidence Code, the custodian of the records or other qualified person shall, in person, by messenger, or by mail, deliver only to the deposition officer specified in the deposition subpoena (1) a true, legible, and durable copy of the records, and (2) an affidavit in compliance with Section 1561 of the Evidence Code. If this delivery is made to the office of the deposition officer, the records shall be enclosed, sealed, and directed as described in subdivision (c) of Section 1560 of the Evidence Code. If this delivery is made at the office of the business whose records are the subject of the deposition subpoena, the custodian of those records or other qualified person shall (1) permit the deposition officer specified in the deposition subpoena to make a copy of the originals of the designated business records during normal business hours as defined in subdivision (e) of Section 1560 of the Evidence Code, or (2) deliver to that deposition officer a true, legible, and durable copy of the records on receipt of payment in cash or by check, by or on behalf of the party serving the deposition subpoena, of the reasonable costs of preparing that copy, and an itemized statement for the cost of preparation, as determined under subdivision (b) of Section 1563 of the Evidence Code. This copy need not be delivered in a sealed envelope. Unless the parties, and if the records are those of a consumer as defined in Section 1985.3 or 1985.6, the consumer, stipulate to an earlier date, the custodian of the records shall not deliver to the deposition officer the records that are the subject of the deposition subpoena prior to the date and time specified in the deposition subpoena. The following legend shall appear in boldface type on the deposition subpoena immediately following the date and time specified for production: "Do not release the requested records to the deposition officer prior to the date and time stated above."

(5) Promptly on or after the deposition date and after the receipt or the making of a copy of business records under this subdivision, the deposition officer shall provide that copy to the party at whose instance the deposition subpoena was served, and a copy of those records to any other party to the action who then or subsequently, within a period of six months following the settlement of the case, notifies the deposition officer that the party desires to purchase a copy of those records.

(6) The provisions of Section 1562 of the Evidence Code concerning the admissibility of the affidavit of the custodian or other qualified person apply to a deposition subpoena served under this subdivision.

(e) A deposition subpoena that commands both the attendance and the testimony of the deponent, as well as the production of business records, documents, and tangible things, shall (1) comply with the requirements of subdivision (c), (2) designate the business records, documents, and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and (3) specify any testing or

sampling that is being sought. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the documents and things designated.

Where, as described in Section 1985.3, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(f) Subject to paragraph (1) of subdivision (d), service of a deposition subpoena shall be effected a sufficient time in advance of the deposition to provide the deponent a reasonable opportunity to locate and produce any designated business records, documents, and tangible things, as described in subdivision (d), and, where personal attendance is commanded, a reasonable time to travel to the place of deposition. Any person may serve the subpoena by personal delivery of a copy of it (1) if the deponent is a natural person, to that person, and (2) if the deponent is an organization, to any officer, director, custodian of records, or to any agent or employee authorized by the organization to accept service of a subpoena.

If a deposition subpoena requires the personal attendance of the deponent, under subdivision (c) or (e), the party noticing the deposition shall pay to the deponent in cash or by check the same witness fee and mileage required by Chapter 1 (commencing with Section 68070) of Title 8 of the Government Code for attendance and testimony before the court in which the action is pending. This payment, whether or not demanded by the deponent, shall be made, at the option of the party noticing the deposition, either at the time of service of the deposition subpoena, or at the time the deponent attends for the taking of testimony.

Service of a deposition subpoena that does not require the personal attendance of a custodian of records or other qualified person, under subdivision (d), shall be accompanied, whether or not demanded by the deponent, by a payment in cash or by check of the witness fee required by paragraph (6) of subdivision (b) of Section 1563 of the Evidence Code.

(g) Personal service of any deposition subpoena is effective to require of any deponent who is a resident of California at the time of service (1) personal attendance and testimony, if the subpoena so specifies, (2) any specified production, inspection, testing, and sampling, and (3) the deponent's attendance at a court session to consider any issue arising out of the deponent's refusal to be sworn, or to answer any question, or to produce specified items, or to permit inspection or photocopying, if the subpoena so specifies, or specified testing and sampling of the items produced.

(h) A deponent who disobeys a deposition subpoena in any manner described in subdivision (g) may be punished for contempt under Section 2023 without the necessity of a prior order of court directing compliance by the witness, and is subject to the forfeiture and the payment of damages set forth in Section 1992.

SEC. 4. Section 1560 of the Evidence Code is amended to read:

1560. (a) As used in this article:

(1) "Business" includes every kind of business described in Section 1270.

(2) "Record" includes every kind of record maintained by a business.

(b) Except as provided in Section 1564, when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in an action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness, within five days after the receipt of the subpoena in any criminal action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, or within 15 days after the receipt of the subpoena in any civil action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, delivers by mail or otherwise a true, legible, and durable copy of all the records described in the subpoena to the clerk of the court or to the judge if there be no clerk or to another person described in subdivision (c) of Section 2026 of the Code of Civil Procedure, together with the affidavit described in Section 1561.

(c) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there be no clerk.

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records

which are original documents and which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received. Records which are copies may be destroyed.

(e) As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party may direct the witness to make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as described in paragraph (3) of subdivision (d) of Section 2020 of the Code of Civil Procedure, at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public. When provided with at least five business days' advance notice by the party's attorney, attorney's representative, or deposition officer, the witness shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena by the party's attorney, attorney's representative or deposition officer. It shall be the responsibility of the attorney's representative to deliver any copy of the records as directed in the subpoena. Disobedience to the deposition subpoena issued pursuant to this subdivision is punishable as provided in subdivision (h) of Section 2020.

SEC. 5. Section 1561 of the Evidence Code is amended to read:

1561. (a) The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:

(1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.

(2) The copy is a true copy of all the records described in the subpoena duces tecum, or pursuant to subdivision (e) of Section 1560 the records were delivered to the attorney, the attorney's representative, or deposition officer for copying at the custodian's or witness' place of business, as the case may be.

(3) The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.

(4) The identity of the records.

(5) A description of the mode of preparation of the records.

(b) If the business has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and those records that are available in one of the manners provided in Section 1560.

(c) Where the records described in the subpoena were delivered to the attorney or his or her representative or deposition officer for copying at the custodian's or witness' place of business, in addition to the affidavit required by subdivision (a), the records shall be accompanied by an affidavit by the attorney or his or her

representative or deposition officer stating that the copy is a true copy of all the records delivered to the attorney or his or her representative or deposition officer for copying.

SEC. 6. Section 1563 of the Evidence Code is amended to read:

1563. (a) This article shall not be interpreted to require tender or payment of more than one witness fee and one mileage fee or other charge, to a witness or witness' business, unless there is an agreement to the contrary between the witness and the requesting party.

(b) All reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.

(1) "Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents ($0.10) per page for standard reproduction of documents of a size $8^1/_2$ by 14 inches or less; twenty cents ($0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of twenty-four dollars ($24) per hour per person, computed on the basis of six dollars ($6) per quarter hour or fraction thereof; actual postage charges; and the actual cost, if any, charged to the witness by a third person for the retrieval and return of records held offsite by that third person.

(2) The requesting party, or the requesting party's deposition officer, shall not be required to pay those costs or any estimate thereof prior to the time the records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with actual delivery of the subpoenaed records, and until payment is made, is under no obligation to deliver the records.

(3) The witness shall submit an itemized statement for the costs to the requesting party, or the requesting party's deposition officer, setting forth the reproduction and clerical costs incurred by the witness. Should the costs exceed those authorized in paragraph (1), or the witness refuses to produce an itemized statement of costs as required by paragraph (3), upon demand by the requesting party, or the requesting party's deposition officer, the witness shall furnish a statement setting forth the actions taken by the witness in justification of the costs.

(4) The requesting party may petition the court in which the action is pending to recover from the witness all or a part of the costs paid to the witness, or to reduce all or a part of the costs charged by the witness, pursuant to this subdivision, on the grounds that those costs were excessive. Upon the filing of the petition the court shall issue an order to show cause and from the time the order is served

on the witness the court has jurisdiction over the witness. The court may hear testimony on the order to show cause and if it finds that the costs demanded and collected, or charged but not collected, exceed the amount authorized by this subdivision, it shall order the witness to remit to the requesting party, or reduce its charge to the requesting party by an amount equal to, the amount of the excess. In the event that the court finds the costs excessive and charged in bad faith by the witness, the court shall order the witness to remit the full amount of the costs demanded and collected, or excuse the requesting party from any payment of costs charged but not collected, and the court shall also order the witness to pay the requesting party the amount of the reasonable expenses incurred in obtaining the order including attorney's fees. If the court finds the costs were not excessive, the court shall order the requesting party to pay the witness the amount of the reasonable expenses incurred in defending the petition, including attorney's fees.

(5) If a subpoena is served to compel the production of business records and is subsequently withdrawn, or is quashed, modified or limited on a motion made other than by the witness, the witness shall be entitled to reimbursement pursuant to paragraph (1) for all costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn or quashed, modified or limited. In the event the subpoena is withdrawn or quashed, if those costs are not paid within 30 days after demand therefor, the witness may file a motion in the court in which the action is pending for an order requiring payment, and the court shall award the payment of expenses and attorney's fees in the manner set forth in paragraph (4).

(6) Where the records are delivered to the attorney, the attorney's representative, or the deposition officer for inspection or photocopying at the witness' place of business, the only fee for complying with the subpoena shall not exceed fifteen dollars ($15), plus the actual cost, if any, charged to the witness by a third person for retrieval and return of records held offsite by that third person. If the records are retrieved from microfilm, the reasonable cost, as defined in paragraph (1), shall also apply.

(c) When the personal attendance of the custodian of a record or other qualified witness is required pursuant to Section 1564, in a civil proceeding, he or she shall be entitled to the same witness fees and mileage permitted in a case where the subpoena requires the witness to attend and testify before a court in which the action or proceeding is pending and to any additional costs incurred as provided by subdivision (b).

SEC. 7. Section 4055.2 of the Labor Code is amended to read:

4055.2. Any party who subpoenas records in any proceeding under this division shall concurrent with service of the subpoena

upon the person who has possession of the records, send a copy of the subpoena to all parties of record in the proceeding.

CHAPTER 445

An act to add Section 3044 to the Family Code, relating to family law.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 3044 is added to the Family Code, to read:

3044. (a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Section 3011. This presumption may only be rebutted by a preponderance of the evidence.

(b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:

(1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child.

(2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

(5) If the perpetrator is on probation or parole, whether he or she is restrained by a protective order granted after a hearing, and whether he or she has complied with its terms and conditions.

(6) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(c) In cases in which both parents are perpetrators of domestic violence, this presumption shall not be applicable.

(d) For purposes of this section, a person has "perpetrated domestic violence" when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury,

or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an exparte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

CHAPTER 446

An act to amend Section 1094.5 of, and to repeal Section 1094.7 of, the Code of Civil Procedure, to amend Sections 3517.6, 18523.1, 18670, 18903, 19056.5, 19141, 19142, 19170.1, 19572.1, 19574, 19582, 19582.1, 19582.6, 19702, 19786, 19798, 19815.41, 19816.2, 19817, 19818.7, 19818.11, 19826.1, 19829, 19832, 19834, 19835, 19836.1, 19841, 19853.1, 19854, 19994, 19994.1, 19994.2, 19997, 19997.3, 19997.4, 19997.5, 19997.6, 19997.7, 19997.8, 19997.11, 19997.13, 22754, and 22825.3 of, to add Sections 19995.5 and 20405.2 to, and to repeal Sections 3517.65, 18670.2, 18903.2, 19056.6, 19141.3, 19142.2, 19170.3, 19173.3, 19175.6, 19570.3, 19572.3, 19574.6, 19576.2, 19576.4, 19582.2, 19582.3, 19582.7, 19702.7, 19786.2, 19798.2, 19815.42, 19816.22, 19817.8, 19818.15, 19828.2, 19829.2, 19832.2, 19834.2, 19835.2, 19841.2, 19853.3, 19854.2, 19994.6, 19994.7, 19994.8, 19997.40, 19997.43, 19997.44, 19997.45, 19997.46, 19997.47, 19997.48, 19997.51, 19997.53, 22754.5, 22754.7, and 22754.11 of, the Government Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 1094.5 of the Code of Civil Procedure is amended to read:

1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the

petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in

which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h) (1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall

not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. This subdivision shall apply to state employees in State Bargaining Unit 8. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 or 19576.5 of the Government Code.

SEC. 2. Section 1094.7 of the Code of Civil Procedure is repealed.

SEC. 3. Section 3517.6 of the Government Code is amended to read:

3517.6. (a) (1) In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820,

19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(3) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19582.1, 19175.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2,

19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(b) In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

SEC. 4. Section 3517.65 of the Government Code is repealed.

SEC. 5. Section 18523.1 of the Government Code is amended to read:

18523.1. (a) Notwithstanding Section 18523, this section shall apply only to state employees in State Bargaining Unit 6.

(b) "Class" means a group of positions sufficiently similar with respect to duties and responsibilities that the same title may reasonably and fairly be used to designate each position allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.

(c) The board may also establish "broadband" classes for which the same general title may be used to designate each position allocated to the class and which may include more than one level or more than one specialty area within the same general field or work. In addition to the minimum qualifications for each broadband class, other job-related qualifications may be required for particular positions within the class. When the board establishes a broadband class, these levels and specialty areas shall be described in the class specification, and the board shall specify any instances in which these levels and speciality areas are to be treated as separate classes for purposes of applying other provisions of law.

SEC. 6. Section 18670 of the Government Code is amended to read:

18670. (a) The board may hold hearings and make investigations concerning all matters relating to the enforcement and effect of this part and rules prescribed hereunder. It may inspect any state institution, office, or other place of employment affected by this part to ascertain whether this part and the board rules are obeyed.

The board shall make investigations and hold hearings at the direction of the Governor or the Legislature or upon the petition of an employee or a citizen concerning the enforcement and effect of this part and to enforce the observance of Article VII of the Constitution and of this part and the rules made under this part.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. For purposes of subdivision (a), any discipline, as defined by Section 19576.1, is not subject to either a board investigation or hearing. Board review shall be limited to acceptance or rejection of discipline imposed pursuant to Section 19576.1.

(c) This subdivision shall apply only to state employees in State Bargaining Unit 8. For the purposes of subdivision (a), any discipline, as defined by the memorandum of understanding or Section 19576.5, is not subject to either a board investigation or hearing.

SEC. 7. Section 18670.2 of the Government Code is repealed.

SEC. 8. Section 18903 of the Government Code is amended to read:

18903. (a) (1) For each class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off or demoted in lieu of layoff.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6 or 8. For each entry level class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off, demoted in lieu of layoff, or transferred in lieu of layoff.

(3) Notwithstanding paragraph (1), this paragraph shall only apply to state employees in State Bargaining Unit 5. For each class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off, demoted in lieu of layoff, or transferred in lieu of layoff.

(b) Within one year from the date of his or her resignation in good standing, or his or her voluntary demotion, the name of an employee who had probationary or permanent status may be placed on the general reemployment list with the consent of the appointing power and the board. The general reemployment list may also contain the names of persons placed thereon by the board in accordance with other provisions of this part.

SEC. 9. Section 18903.2 of the Government Code is repealed.

SEC. 10. Section 19056.5 of the Government Code is amended to read:

19056.5. (a) Notwithstanding any other provision in this part and except as provided in subdivision (b), if the appointment is to be made from a general reemployment list, the names of the three persons with the highest standing on the list shall be certified to the appointing power.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 6 or 8. If the appointment is to be made from a general reemployment list, the name of the person with the highest standing on the list shall be certified to the appointing power.

SEC. 11. Section 19056.6 of the Government Code is repealed.

SEC. 12. Section 19141 of the Government Code is amended to read:

19141. (a) This section applies only to a permanent employee, or an employee who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service due to a permanent separation. As used in this section, "former position" is defined as in Section 18522, or, if the appointing power to which reinstatement is to be made and the employee agree, a vacant position in any department, commission, or state agency for which he or she is qualified at substantially the same level.

(b) Within the periods of time specified below, an employee who vacates a civil service position to accept an appointment to an exempt position shall be reinstated to his or her former position at the termination either by the employee or appointing power of the exempt appointment, provided he or she (1) accepted the appointment without a break in the continuity of state service, and (2) requests in writing reinstatement of the appointing power of his or her former position within 10 working days after the effective date of the termination.

(c) The reinstatement may be requested by the employee only within the following periods of time:

(1) At any time after the effective date of the exempt appointment if the employee was appointed under one of the following:

(A) Subdivision (a), (b), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the California Constitution.

(B) Section 2.1 of Article IX of the California Constitution.

(C) Section 22 of Article XX of the California Constitution.

(D) To an exempt position under the same appointing power as the former position even though a shorter period of time may be otherwise specified for that appointment.

(2) Within six months after the effective date of the exempt appointment if appointed under subdivision (h), (i), (k), or (*l*) of Section 4 of Article VII of the California Constitution.

(3) (A) Within four years after the effective date of an exempt appointment if appointed under any other authority.

(B) Within four years after the effective date of an exempt appointment if appointed under any other authority. Notwithstanding subparagraph (A), this subparagraph shall apply to state employees in State Bargaining Unit 5, 6, or 8.

(d) An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

(e) An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

(f) When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her eligibility for merit salary increases.

(g) If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

SEC. 13. Section 19141.3 of the Government Code is repealed.

SEC. 14. Section 19142 of the Government Code is amended to read:

19142. (a) Every person accepts and holds a position in the state civil service subject to mandatory reinstatement of another person.

(b) (1) Upon reinstatement of a person any necessary separations are effected under the provisions of Section 19997.3 governing layoff and demotion except that (A) an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13, and (B) seniority shall not be counted as provided in Section 19997.3 when this would result in the layoff of the person who has the reinstatement right. Under such a circumstance, qualifying service in classes at substantially the same or higher salary level is the only state service that shall be counted for purposes of determining who is to be separated.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 8. Upon reinstatement of a person any necessary separations are effected under Section 19997.3 governing layoff and demotion except that an

employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13.

SEC. 15. Section 19142.2 of the Government Code is repealed.

SEC. 16. Section 19170.1 of the Government Code is amended to read:

19170.1. (a) Notwithstanding Section 19170 for state employees in State Bargaining Unit 5, 6, or 8, the board shall establish for each class the length of the probationary period. The probationary period that shall be served upon appointment shall be not less than six months nor more than two years.

(b) The board may provide by rule: (1) for increasing the length of an individual probationary period by adding thereto periods of time during which an employee, while serving as a probationer, is absent from his or her position; or (2) for requiring an additional period not to exceed the length of the original probationary period when a probationary employee returns after an extended period of absence and the remainder of the probationary period is insufficient to evaluate his or her current performance.

SEC. 17. Section 19170.3 of the Government Code is repealed.

SEC. 18. Section 19173.3 of the Government Code is repealed.

SEC. 19. Section 19175.6 of the Government Code is repealed.

SEC. 20. Section 19570.3 of the Government Code is repealed.

SEC. 21. Section 19572.1 of the Government Code is amended to read:

19572.1. (a) Notwithstanding Section 19572, this section shall apply to state employees in State Bargaining Unit 8.

(b) Disciplinary actions pursuant to Section 19576.5 shall be for just cause or one or more of the following causes for discipline:

(1) Fraud in securing appointment.
(2) Incompetency.
(3) Inefficiency.
(4) Inexcusable neglect of duty.
(5) Insubordination.
(6) Dishonesty.
(7) Drunkenness on duty.
(8) Intemperance.
(9) Addiction to the use of controlled substances.
(10) Inexcusable absence without leave.
(11) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony of any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
(12) Immorality.
(13) Discourteous treatment of the public or other employees.
(14) Improper political activity.
(15) Willful disobedience.
(16) Misuse of state property.

(17) Violation of this part or board rule.

(18) Violation of the prohibitions set forth in accordance with Section 19990.

(19) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.

(20) Other failure of good behavior either during or outside of duty hours that is of such a nature that it causes discredit to the appointing authority of the person's employment.

(21) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.

(22) The use during duty hours, for training or target practice, of any material that is not authorized therefor by the appointing power.

(23) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.

(24) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 22. Section 19572.3 of the Government Code is repealed.

SEC. 23. Section 19574 of the Government Code is amended to read:

19574. (a) The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (1) a statement of the nature of the adverse action; (2) the effective date of the action; (3) a statement of the reasons therefor in ordinary language; (4) a statement advising the employee of the right to answer the notice orally or in writing; and (5) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. This section shall not apply to discipline as defined by Section 19576.1.

(c) This subdivision shall apply only to state employees in State Bargaining Unit 8. This section shall not apply to minor discipline, as defined by Section 19576.5 or a memorandum of understanding.

SEC. 24. Section 19574.6 of the Government Code is repealed.

SEC. 25. Section 19576.2 of the Government Code is repealed.

SEC. 26. Section 19576.4 of the Government Code is repealed.

SEC. 27. Section 19582 of the Government Code is amended to read:

19582. (a) Hearings may be held by the board, or by any authorized representative, but the board shall render the decision that in its judgment is just and proper.

During a hearing, after the appointing authority has completed the opening statement or the presentation of evidence, the employee, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a dismissal of the charges.

If it appears that the evidence presented supports the granting of the motion as to some but not all of the issues involved in the action, the board or the authorized representative shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no judgment shall be entered prior to a final determination of the action on the remaining issues, and shall be subject to final review and approval by the board.

(b) If a contested case is heard by an authorized representative, he or she shall prepare a proposed decision in a form that may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the board as a public record and furnished to each party within 10 days after the proposed decision is filed with the board. The board itself may adopt the proposed decision in its entirety, may remand the proposed decision, or may reduce the adverse action set forth therein and adopt the balance of the proposed decision.

(c) If the proposed decision is not remanded or adopted as provided in subdivision (b), each party shall be notified of the action, and the board itself may decide the case upon the record, including the transcript, with or without taking any additional evidence, or may refer the case to the same or another authorized representative to take additional evidence. If the case is so assigned to an authorized representative, he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party. The board itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present oral and written argument before the board itself. If additional oral

evidence is introduced before the board itself, no board member may vote unless he or she heard the additional oral evidence.

(d) In arriving at a decision or a proposed decision, the board or its authorized representative may consider any prior suspension or suspensions of the appellant by authority of any appointing power, or any prior proceedings under this article.

(e) The decision shall be in writing and contain findings of fact and the adverse action, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be served on the parties personally or by mail.

(f) This section shall not apply to minor discipline, as defined in a memorandum of understanding or by Section 19576.5 for state employees in State Bargaining Unit 8.

SEC. 28. Section 19582.1 of the Government Code is amended to read:

19582.1. Notwithstanding Section 19582, this section shall apply to state employees in State Bargaining Unit 8.

(a) The board's review of decisions of minor discipline, as defined by a memorandum of understanding or by Section 19576.5, shall be limited to either adopting the penalty of the proposed decision or revoking the disciplinary action in its entirety.

(b) The board's review of decisions of discipline, including minor discipline, shall not impose any discipline against an employee that would jeopardize the employee's status under the federal Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of The Fair Labor Standards Act of 1938, as amended (Title 29, Section 213(a)(1), United States Code) and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section and as those provisions maybe amended in the future.

(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 29. Section 19582.2 of the Government Code is repealed.

SEC. 30. Section 19582.3 of the Government Code is repealed.

SEC. 31. Section 19582.6 of the Government Code is amended to read:

19582.6. (a) Notwithstanding Section 19582.5, this section shall apply only to state employees in State Bargaining Unit 8.

(b) The board may designate certain of its decisions as precedents. Precedential decisions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a

precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

(c) For the purpose of this section, a decision reached pursuant to Section 19576.2 is not subject to board precedential decision, and the board may not adopt that decision as a precedential decision.

SEC. 32. Section 19582.7 of the Government Code is repealed.

SEC. 33. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, "discrimination" includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, "physical disability" includes, but is not limited to, impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment that requires special education or related services.

(c) As used in this section, "mental disability" includes, but is not limited to, any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Notwithstanding subdivisions (b) and (c), if the definition of disability used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(f) (1) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages,

which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6 or 8. If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint that shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) (1) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in disciplinary actions defined in Section 19576.5 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.3.

(i) (1) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

(2) This subdivision shall not apply to complaints of discrimination filed in accordance with Section 19576.2.

SEC. 34. Section 19702.7 of the Government Code is repealed.

SEC. 35. Section 19786 of the Government Code is amended to read:

19786. (a) When a civil service employee has been reinstated after military service in accordance with Section 19780, and any question arises relative to his or her ability or inability for any reason arising out of the military service to perform the duties of the position to which he or she has been reinstated, the board shall, upon the request of the appointing power or of the employee, hear the matter and may on its own motion or at the request of either party take any and all necessary testimony of every nature necessary to a decision on the question.

(b) If the board finds that the employee is not able for any reason arising out of the military service to carry out the usual duties of the position he or she then holds, it shall order the employee placed in a position in which the board finds he or she is capable of performing the duties in the same class or a comparable class in the same or any other state department, bureau, board, commission, or office under this part and the rules of the board covering transfer of an employee from a position under the jurisdiction of one appointing power to a position under the jurisdiction of another appointing power, without the consent of the appointing powers, where a vacancy may be made available to him or her under this part and the rules of the board, but in no event shall the transfer constitute a promotion within the meaning of this part and the rules of the board.

(c) (1) If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.3, provided that no civil service employee who was employed prior to September 16, 1940, shall be laid off as a result of the placing of an employee in the same class or a comparable class under this section.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 8. If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.3.

(d) The board may order the civil service employee reinstated to the department, bureau, board, commission, or office from which he or she was transferred either upon request of the employee or the

appointing power from which transferred. The reinstatement may be made after a hearing as provided in this section if the board finds that the employee is at the time of the hearing able to perform the duties of the position.

SEC. 36. Section 19786.2 of the Government Code is repealed.

SEC. 37. Section 19798 of the Government Code is amended to read:

19798. In establishing order and subdivisions of layoff and reemployment, the board, when it finds past discriminatory hiring practices, shall by rule, adopt a process that provides that the composition of the affected work force will be the same after the completion of a layoff, as it was before the layoff procedure was implemented. This section does not apply to state employees in State Bargaining Unit 5, 6, or 8.

SEC. 38. Section 19798.2 of the Government Code is repealed.

SEC. 39. Section 19815.41 of the Government Code is amended to read:

19815.41. (a) Notwithstanding subdivision (e) of Section 19815.4, this section shall apply to state employees in State Bargaining Unit 5, 6, or 8.

(b) The director shall hold nonmerit statutory appeal hearings, subpoena witnesses, administer oaths, and conduct investigations in accordance with Department of Personnel Administration Rule 599.859 (b)(2).

(c) The director may, at his or her discretion, hold hearings, subpoena witnesses, administer oaths, or conduct investigations or appeals concerning other matters relating to the department's jurisdiction.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 40. Section 19815.42 of the Government Code is repealed.

SEC. 41. Section 19816.2 of the Government Code is amended to read:

19816.2. Notwithstanding any other provision of this part, regulations and other provisions pertaining to the layoff or demotion in lieu of layoff of civil service employees that are established or agreed to by the department shall be subject to review by the State Personnel Board for consistency with merit employment principles as provided for by Article VII of the California Constitution. This section does not apply to state employees in State Bargaining Unit 5, 6, or 8.

SEC. 42. Section 19816.22 of the Government Code is repealed.

SEC. 43. Section 19817 of the Government Code is amended to read:

19817. This article applies only with respect to regulations that apply to state employees in State Bargaining Unit 5, 6, or 8.

SEC. 44. Section 19817.8 of the Government Code is repealed.

SEC. 45. Section 19818.7 of the Government Code is amended to read:

19818.7. (a) Notwithstanding Section 19818.6, this section shall apply only to state employees in State Bargaining Unit 6.

(b) The department shall administer the Personnel Classification Plan of the State of California including the allocation of every position to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions that meet the definition of a class pursuant to Section 18523.1 shall be included in the same class.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) A broadband project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

SEC. 46. Section 19818.11 of the Government Code is amended to read:

19818.11. (a) This section shall apply only to state employees in State Bargaining Unit 6.

The department may, directly or through agreement or contract with one or more agencies, conduct demonstration classification, compensation, and related projects. "Demonstration project", for the purposes of this section, means a project that uses alternative classification, compensation, and other personnel management policies and procedures to determine if a change would result in cost savings, improved efficiency, or both cost savings and improved efficiency in the existing personnel management system.

(b) Nothing in this section shall infringe upon or conflict with the merit principles as embodied in Article VII of the California Constitution.

(c) The establishment of a demonstration project shall not be limited by the lack of specific authority in this division or by the

existence of any statute or regulation that is inconsistent with actions to be taken in the demonstration project.

(d) Prior to implementation of a demonstration project, the department shall adopt regulations specifying the impact of the project on employee status, compensation, benefits, and rights with regard to transfer, layoff, promotion, and demotion. These regulations are not 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), and shall automatically expire after five years from the date of adoption or at the end of the demonstration project, whichever is earlier. Nothing in this section shall affect the rights of employees included within demonstration projects, except those rights directly pertaining to the subject matter of the demonstration project.

(e) The department shall notify each house of the Legislature when a demonstration project is undertaken. The department shall also evaluate each project at its conclusion and notwithstanding Section 7550.5, shall prepare and submit a summary of the evaluation to each house of the Legislature that includes a discussion of the following:

(1) The purpose of the demonstration project that specifically states the goals or objectives of the project.

(2) The cost projections and methods by which savings, if any, may be calculated.

(3) A definitive mechanism by which the value and success, if any, of the demonstration project may be quantified as feasible. This mechanism shall include specific numerical objectives that must be met or exceeded if a demonstration project is to be judged successful.

(f) A demonstration project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

(g) Any demonstration project implemented under this section shall not include the adoption or waiver of regulations or statutes that are administered or enforced by the State Personnel Board without the express approval of the State Personnel Board.

SEC. 47. Section 19818.15 of the Government Code is repealed.

SEC. 48. Section 19826.1 of the Government Code is amended to read:

19826.1. Notwithstanding Section 19826, effective January 1, 1999, this section shall only apply to state employees in State Bargaining Unit 6.

(a) The department shall establish and adjust salary ranges or rates for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range or rate shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges or rates, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a change in salary range or rate retroactive to the date of application for the change.

(b) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range or rate for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

(c) Notwithstanding Section 7550.5, on or before January 10 of each year, the department shall prepare and submit to the parties meeting and conferring pursuant to Section 3517 and to the Legislature, a report containing the department's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 49. Section 19828.2 of the Government Code is repealed.

SEC. 50. Section 19829 of the Government Code is amended to read:

19829. (a) (1) Salary ranges shall consist of minimum and maximum salary limits. The department shall provide for intermediate steps within these limits to govern the extent of the salary adjustment that an employee may receive at any one time; provided, that in classes and positions with unusual conditions or hours of work or where necessary to meet the provisions of state law recognizing differential statutory qualifications within a profession or prevailing rates and practices for comparable services in other public employment and in private business, the department may establish more than one salary range or rate or method of compensation within a class.

(2) Effective October 1, 1995, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. Salary ranges shall consist of minimum and maximum salary limits. Except where otherwise provided by law, the appointing

power or designee may authorize payment at any salary rate within these limits to govern the extent of a salary adjustment that an employee may receive for situations including, but not limited to, recruitment and retention, extraordinary qualifications, and successful job performance or promotion. Only those employees who are performing successfully as determined by the appointing power or designee shall receive periodic salary increases until the maximum of the salary range is reached to recognize continuous successful performance or value to the organization. Adjustments within the salary range authorized in this paragraph may be either temporary or permanent. The department may establish more than one salary range or rate or method of compensation within a class.

(3) Effective January 1, 1999, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Salary ranges shall consist of minimum and maximum salary limits. Except where otherwise provided by law, the appointing power or designee, consistent with the regulations of the department, shall determine the employee's salary rate upon appointment and may authorize subsequent increases in these rates based on considerations including, but not limited to, recruitment and retention, extraordinary qualifications, and successful job performance or promotion. Only those employees who are performing successfully as determined by the appointing power or designee shall receive periodic performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance or value to the organization. Adjustments within the salary range authorized in this section may be either temporary or permanent. The department may establish more than one salary range or rate or method of compensation within a class.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 51. Section 19829.2 of the Government Code is repealed.

SEC. 52. Section 19832 of the Government Code is amended to read:

19832. (a) (1) After completion of the first year in a position, each employee shall receive a merit salary adjustment equivalent to one of the intermediate steps during each year when he or she meets the standards of efficiency as the department by rule shall prescribe.

(2) Effective October 1, 1995, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. Employees whose salary is not at the maximum of the salary range shall receive a salary review and be considered for a salary adjustment at least annually. Only those employees who are

performing successfully, as determined by the appointing power, shall receive salary increases until the maximum of the salary range is reached to recognize continuous successful performance. The employee's salary rate may not exceed the maximum of the salary range or fall below the minimum of the salary range except where otherwise provided by law or department rules.

(3) Effective January 1, 1999, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Employees whose salary is not at the maximum of the salary range shall be considered for a performance salary adjustment at least annually. Only those employees who are performing successfully as determined by the appointing power shall receive performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance. The employee's salary rate may not exceed the maximum of the salary range or fall below the minimum of the salary range except where otherwise provided by law or department rules.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 53. Section 19832.2 of the Government Code is repealed.

SEC. 54. Section 19834 of the Government Code is amended to read:

19834. (a) Automatic salary adjustments shall be made for employees in the state civil service in accordance with this chapter and department rule adopted pursuant hereto, notwithstanding the power now or hereafter conferred on any officer to fix or approve the fixing of salaries, unless there is not sufficient money available for the purpose in the appropriation from which the salary shall be paid and the director shall so certify.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

(d) Effective January 1, 1999, this section shall not apply to state employees in State Bargaining Unit 8.

SEC. 55. Section 19834.2 of the Government Code is repealed.

SEC. 56. Section 19835 of the Government Code is amended to read:

19835. (a) The right of an employee to automatic salary adjustments is cumulative for a period not to exceed two years and he or she shall not, in the event of an insufficiency of appropriation, lose his or her right to these adjustments for the intermediate steps to which he or she may be entitled for this period.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

(d) Effective January 1, 1999, this section shall not apply to state employees in State Bargaining Unit 8.

SEC. 57. Section 19835.2 of the Government Code is repealed.

SEC. 58. Section 19836.1 of the Government Code is amended to read:

19836.1. Effective January 1, 1999, notwithstanding Section 19836, this section shall apply only to state employees in State Bargaining Unit 8.

(a) The appointing power or designee with the approval of the department may authorize payment at any step above the minimum salary limit to classes or positions in order to correct salary inequities.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 59. Section 19841 of the Government Code is amended to read:

19841. (a) Notwithstanding Section 11030, whenever a state officer or employee is required by the appointing power because of a change in assignment, promotion, or other reason related to his or her duties to change his or her place of residence, the officer, agent, or employee shall receive his or her actual and necessary moving, traveling, lodging, and meal expenses incurred by him or her both before and after and by reason of the change of residence. The maximum allowances for these expenses shall be as follows: the costs of packing, transporting, and unpacking 11,000 pounds of household effects, traveling, lodging, and meal expenses for 60 days while locating a permanent residence, storage of household effects for 60 days, and additional miscellaneous allowances not in excess of two hundred dollars ($200). The maximum allowances may be exceeded where the director determines that the change of residence will

result in unusual and unavoidable hardship for the officer or employee, and in those cases the director shall determine the maximum allowances to be received by the officer or employee.

(b) If a change of residence reasonably requires the sale of a residence or the settlement of an unexpired lease, the officer or employee may be reimbursed for any of the following expenses:

(1) The settlement of the unexpired lease to a maximum of one year. Upon the date of surrender of the premises by the employee who is the lessee, the rights and obligations of the parties to the lease shall be as determined by Section 1951.2 of the Civil Code.

The state shall be absolved of responsibility for an unexpired lease if the department determines the employee knew or reasonably should have known that a transfer involving a physical move was imminent before entering into the lease agreement.

(2) In the event of residence sale, reimbursement for brokerage and other related selling fees or charges, as determined by regulations of the department, customarily charged for like services in the locality where the residence is located.

(c) This subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 8. If the change of residence is caused by a layoff, the application of this section shall be at the discretion of the department based upon the recommendation of the appointing power.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 60. Section 19841.2 of the Government Code is repealed.

SEC. 61. Section 19853.1 of the Government Code is amended to read:

19853.1. (a) Notwithstanding Section 19853, this section shall apply to state employees in State Bargaining Unit 5.

(b) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, the day after Thanksgiving, December 25, and every day appointed by the Governor of this state for a public fast, Thanksgiving, or holiday.

If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11 falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays included in this section and who does work on any of these holidays shall be entitled to be paid compensation or given compensating time off for that

work in accordance with his or her classification's assigned workweek group.

(c) If the provisions of subdivision (b) are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) Any employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, is entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, Thanksgiving Day, the day after Thanksgiving, December 25.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.

(3) When a holiday, other than a personal holiday, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, accrue only an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classification's assigned workweek group.

(6) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Personnel Administration rules.

(e) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for March 31, known as "Cesar Chavez Day."

(f) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for the fourth Friday in September, known as "Native American Day."

(g) This section shall become effective only when the Department of Personnel Administration notifies the Legislature

that the language contained in this section has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

SEC. 62. Section 19853.3 of the Government Code is repealed.

SEC. 63. Section 19854 of the Government Code is amended to read:

19854. (a) Every employee, upon completion of six months of his or her initial probationary period in state service, shall be entitled to one personal holiday per fiscal year. The personal holiday shall be credited to each full-time employee on the first day of July. No employee shall lose a personal holiday credit because of the change from calendar to fiscal year crediting. The department head or designee may require the employee to provide five working days' advance notice before a personal holiday is taken, and may deny use subject to operational needs. The department may provide by rule for the granting of this holiday for employees.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) This section does not apply to state employees in State Bargaining Unit 5.

(d) Subdivision (c) shall become effective only when the Department of Personnel Administration notifies the Legislature that the language contained in that subdivision has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

SEC. 64. Section 19854.2 of the Government Code is repealed.

SEC. 65. Section 19994 of the Government Code is amended to read:

19994. (a) (1) When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency. Granting of seniority credit under this section is subject to review by the State Personnel Board pursuant to Section 19816.2.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 8. When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to

which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency.

(b) The department shall limit that determination to the time any transferred employees were employed in the specific function or a function substantially similar while in the former agency and the seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he or she had been continuously employed by the State of California. This section is applicable to any function heretofore transferred to the state, whether by state action or otherwise, as well as to any future transfers of a function to the state, whether by state action or otherwise.

SEC. 66. Section 19994.1 of the Government Code is amended to read:

19994.1. (a) An appointing power may transfer any employee under his or her jurisdiction: (1) to another position in the same class; or (2) from one location to another whether in the same position, or in a different position as specified above in (1) or in Section 19050.5.

(b) (1) When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer. Unless the employee waives this right, the appointing power shall provide to the employee 60 days prior to the effective date of the transfer a written notice setting forth in clear and concise language the reasons why the employee is being transferred.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 8. When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer unless the transfer is in lieu of layoff, in which case the notice shall be 30 days in advance of the effective date of the transfer. Unless the employee waives this right, the written notice shall set forth in clear and concise language the reasons why the employee is being transferred.

(c) If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 67. Section 19994.2 of the Government Code is amended to read:

19994.2. (a) (1) When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 8. When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations, including special skills.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 68. Section 19994.6 of the Government Code is repealed.

SEC. 69. Section 19994.7 of the Government Code is repealed.

SEC. 70. Section 19994.8 of the Government Code is repealed.

SEC. 71. Section 19995.5 is added to the Government Code, to read:

19995.5. (a) There is hereby created in the State Treasury, the State Employee Scholarship Fund to which funds shall be allocated from the amount negotiated in memoranda of understanding between the state and recognized employee organizations, as defined in Section 3513, and appropriated by the Legislature for the 2000–01 fiscal year.

(b) The fund shall be used to establish a program for career advancement to assist eligible state employees to participate in educational programs that will enhance the personal growth and career development of employees in state government.

(c) The fund shall be administered by the Department of Personnel Administration. The amounts to be allocated and expended from funds available for compensation shall be determined by the department.

(d) Notwithstanding Section 13340, moneys in the fund shall be available for expenditure without regard to fiscal years through June 30, 2001. As of June 30, 2001, the fund shall cease to exist unless the

existence of the fund is extended by statute and that statute is enacted prior to June 30, 2001.

SEC. 72. Section 19997 of the Government Code is amended to read:

19997. (a) Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule. All layoff provisions and procedures established or agreed to under this article shall be subject to State Personnel Board review pursuant to Section 19816.2.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 8. Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule.

SEC. 73. Section 19997.3 of the Government Code is amended to read:

19997.3. (a) (1) Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

(A) The extent to which seniority credits may be granted for less than full-time service.

(B) The seniority credit to be granted for service in a class that has been abolished, combined, divided, or otherwise altered under the authority of Section 18802.

(C) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(D) Any other matters as are necessary or advisable to the operation of this chapter.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 8. Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

(A) The extent to which seniority credits may be granted for less than full-time service.

(B) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(C) Any other matters as are necessary or advisable to the operation of this chapter.

(3) For state employees in State Bargaining Unit 8, less than full-time service shall be prorated.

(b) For professional, scientific, administrative, management, and executive classes, the department shall prescribe standards and methods by rule whereby employee efficiency shall be combined with seniority in determining the order of layoffs and the order of names on reemployment lists. These standards and methods may vary for different classes, and shall take into consideration the needs of state service and practice in private industry and other public employment.

(c) For state employees in State Bargaining Unit 8, prior to laying off, transferring, or demoting permanent or probationary employees, employment for other employees who did not formerly have permanent status shall be terminated in the following sequence: student assistants, retired annuitants, temporary intermittent, limited term, and permanent intermittent appointments. No distinction shall be made between a probationary and permanent employee or between full-time and part-time employees when making layoffs. For layoff purposes employees on leaves of absences shall be treated the same as other employees.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding incurs either present or future costs, or requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 74. Section 19997.4 of the Government Code is amended to read:

19997.4. (a) For the purposes of determining seniority pursuant to paragraph (1) of subdivision (a) of Section 19997.3, the term "state service" shall include all service that is exempt from state civil service.

(b) Notwithstanding subdivision (a), this subdivision shall apply only to state employees in State Bargaining Unit 5. For the purposes of determining seniority pursuant to paragraph (2) of subdivision (a) of Section 19997.3, the term "state service" shall include service that is exempted from state civil service by subdivisions (e), (f), (g), (i), and (m) of Section 4 of Article VII of the California Constitution.

(c) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 6 or 8. For the purposes of determining seniority pursuant to paragraph (2) of subdivision (a) of Section 19997.3, the term "state service" shall include service that is exempted from the state civil service by any of the following:

(1) Subdivision (e), (f), (g), (i), or (m) of Section 4 of Article VII of the California Constitution.

(2) Subdivision (a) of Section 4 of Article VII of the California Constitution if an employee provides to the appointing power a copy of his or her official employment history record by July 1, 1999, or within six months of appointment to the state civil service.

SEC. 75. Section 19997.5 of the Government Code is amended to read:

19997.5. (a) Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used unless this would result in the layoff of an employee who has been reinstated in the class and subdivision of layoff under Section 19780, and in the retention of an employee who was appointed in the class and subdivision of layoff during the time that a reinstated employee was on military leave. Under these circumstances, seniority shall not be counted as provided in Section 19997.3. Instead, service in the subdivision of layoff that qualifies under Section 19997.3 for credit is the only state service that shall be counted.

Whenever such a layoff results in the demotion to a lower class of an employee who has been reinstated after recognized military service as provided in Section 19780, the resulting layoff, if any, in the lower class shall be made as though that reinstated employee had been in that lower class at the time he or she went on military leave.

Any layoff occurring within one year after reinstatement of an employee after recognized military service shall be presumed to have been necessary by reason of reinstatement of an employee or employees under Section 19780 unless the department determines that the reason for layoff is clearly not related to the reinstatement.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 8. Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used.

SEC. 76. Section 19997.6 of the Government Code is amended to read:

19997.6. (a) A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency.

(b) Seniority credit for recognized military service shall be computed as if it were service in the class to which the employee was first given permanent civil service or exempt appointment after his

or her entry into the state service following recognized military service.

(c) Seniority credit for recognized military service shall not exceed one year's credit if the veteran had no state service prior to entering the military service.

(d) This section shall become operative on July 1, 1993.

(e) Notwithstanding subdivisions (a), (c), and (d), this subdivision shall apply to state employees in State Bargaining Unit 5, 6 or 8. A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive a maximum of one year's seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency. For purposes of this subdivision, "recognized military service" means service in a military campaign or expedition for which a medal was authorized by the government of the United States in accordance with Section 300.1 of Title 12 of the California Code of Regulations.

SEC. 77. Section 19997.7 of the Government Code is amended to read:

19997.7. (a) Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more of these employees who have the same score, veterans shall have preference in retention. Other ties shall be resolved according to department rule that shall take into consideration other matters of record before names are drawn by lot.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 8. Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more employees who have the same score, veterans shall have preference in retention. Other ties shall be determined by lot.

SEC. 78. Section 19997.8 of the Government Code is amended to read:

19997.8. (a) (1) In lieu of being laid off an employee may elect demotion to: (A) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (B) a class in the same line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 8. In lieu of being laid off an employee may elect demotion to: (A) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (B) a class in the same class series as the class of layoff, but of lesser responsibility, or (C) a class in a related line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class if necessary. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(b) Demotions in lieu of layoff, and layoffs resulting therefrom, shall be governed by this article and shall be made within the subdivisions approved by the department for this purpose. These subdivisions need not be the same as those used to determine the area of layoff under Section 19997.2.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 79. Section 19997.11 of the Government Code is amended to read:

19997.11. (a) (1) The names of employees to be laid off or demoted shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off or demoted. The department may also place these names upon the general reemployment list for any other appropriate classes as the department determines.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department may also place these names upon the general

reemployment list for any other appropriate classes as the department determines.

(3) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6 or 8. The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated and upon the departmental reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department shall also place these names upon the general reemployment list only for the entry level class within the employee's primary demotional pattern. This general reemployment list shall be a rule of one name.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 80. Section 19997.13 of the Government Code is amended to read:

19997.13. (a) (1) An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff and not more than 60 days after the date of the seniority computation. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 8. An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 81. Section 19997.40 of the Government Code is repealed.

SEC. 82. Section 19997.43 of the Government Code is repealed.

SEC. 83. Section 19997.44 of the Government Code is repealed.

SEC. 84. Section 19997.45 of the Government Code is repealed.

SEC. 85. Section 19997.46 of the Government Code is repealed.

SEC. 86. Section 19997.47 of the Government Code is repealed.

SEC. 87. Section 19997.48 of the Government Code is repealed.

SEC. 88. Section 19997.51 of the Government Code is repealed.

SEC. 89. Section 19997.53 of the Government Code is repealed.

SEC. 90. Section 20405.2 is added to the Government Code, to read:

20405.2. A member who made the election to remain under the miscellaneous or industrial retirement benefit, as provided in Section 20405.1, may elect to be subject to the state safety formula within 90 days of notification by the board. The election, which shall be provided by the board on and after January 1, 2000, shall be filed with the board. Past service that would have been credited as a safety member, but for the member's election to remain under the miscellaneous or industrial formula, shall be credited under the safety formula. This section shall apply to state employees in state bargaining units that have agreed to this provision in a memorandum of understanding, or authorized by the Director of the Department of Personnel Administration for classifications of state employees that are excluded from the definition of state employee by paragraph (c) of Section 3513 of the Government Code.

SEC. 91. Section 22754 of the Government Code is amended to read:

22754. As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) "Board" means the Board of Administration of the Public Employees' Retirement System.

(b) "Employee" means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement System employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except

persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) "Health benefits plan" means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) "Annuitant" means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21545, 21546, or 21547 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) (1) "Family member" means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees, as defined in Section 19815, that are in State

Bargaining Unit 5. "Family member" only means an employee's legal spouse and any unmarried child, adopted child, stepchild, recognized natural child, or legal ward living with the employee in a regular parent-child relationship.

(g) "Contracting agency" means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds.

(h) "Employer" means the state, any contracting agency employing an employee, and any agency that has elected to become subject to this part pursuant to Section 22856.

(i) "Special district" means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 92. Section 22754.5 of the Government Code is repealed.

SEC. 93. Section 22754.7 of the Government Code is repealed.

SEC. 94. Section 22754.11 of the Government Code is repealed.

SEC. 95. Section 22825.3 of the Government Code is amended to read:

22825.3. (a) Notwithstanding Sections 22825, 22825.1, and 22825.2, state employees who become state members of the Public Employees' Retirement System after January 1, 1989, and who are included in the definition of state employee in subdivision (c) of Section 3513 shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Section 22825.1, unless these employees are credited with 10 years of state service as defined by this section, at the time of retirement.

(b) Notwithstanding Sections 22825, 22825.1, and 22825.2, a state employee who became a state member of the Public Employees' Retirement System after January 1, 1990, and is either (1) excluded from the definition of state employee in subdivision (c) of Section 3513; or (2) a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Section 22825.1, unless the employee is credited with 10 years of state service as defined by this section, at the time of retirement.

(c) The percentage of employer contribution payable for postretirement health benefits for an employee subject to this section shall be based on the member's completed years of credited state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

(d) This section shall apply only to state employees who retire for service.

(e) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(f) For the purposes of this section, "state service" shall mean service rendered as an employee or an appointed or elected officer of the state for compensation. In those cases where the state assumes or has assumed from a local public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elected officers of that local public agency shall not be credited, at retirement, as state service for the purposes of this section, unless the former employer has paid or agreed to pay the state agency the amount actuarially determined to equal the cost for any employee health benefits which were vested at the time that the function and the related personnel were assumed by the state. For noncontracting local public agencies the state department shall certify the completed years of local agency service to be credited to the employee to the Public Employees' Retirement System at the time of separation for retirement.

(g) Whenever the state contracts to assume a local public agency function, completed years of service rendered by the personnel for compensation as employees or appointed or elected officers of that local public agency shall be credited as state service only upon a finding by the Department of Finance that the contract contains a benefit factor sufficient to reimburse the state for the amount

necessary to fully compensate the state for postretirement health benefit costs for those personnel.

(h) This section shall not apply to employees of the California State University or the Legislature.

SEC. 96. The provisions of the following memoranda of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and the following employee organizations in 1999, which require the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code:

(a) Unit 16—Union of American Physicians and Dentists.

(b) Unit 17—California State Employees Association.

(c) Unit 18—California Association of Psychiatric Technicians.

(d) Unit 19—American Federation of State, County and Municipal Employees.

SEC. 97. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 98. Any provision in a memorandum of understanding approved by any section of this act that requires the expenditure of funds shall not take effect unless funds for these provisions are appropriated by the Legislature. If funds for these provisions are not appropriated by the Legislature, all or any part of the memorandum of understanding may be declared null and void by any affected employee organization.

SEC. 99. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the General Fund for transfer to the State Employee Scholarship Fund, as created by Section 19995.5 of the Government Code, to provide for the establishment and administration of the state employee scholarship program. Any additional funds for subsequent fiscal years shall be transferred from the amount appropriated in the annual Budget Act for employee compensation.

SEC. 100. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 1999–2000 fiscal year and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 447

An act to amend Sections 9562 and 10721 of, to amend and renumber Sections 10782 and 10783 of, and to add Sections 10704, 10782, 10783, and 10784 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 9562 of the Food and Agricultural Code is amended to read:

9562. (a) Subject to the rights and procedures established pursuant to Chapter 4.5 (commencing with Section 11400) of Division 3 of Title 2 of the Government Code, and in accordance with regulations adopted pursuant to this code, the State Veterinarian shall impose a quarantine if he or she believes, upon any basis reasonably supportable by standard epidemiological practice or credible scientific research, that a population of domestic animals or food product from animals has contracted, or may carry, an illness, infection, pathogen, contagion, toxin, or condition that, without intervention, could transmit an illness that could kill or seriously damage other animals or humans, including, in addition to the original condition, those clinically plausible secondary illnesses, infections, pathogens, contagions, toxins, or conditions arising from the effects of the original.

(b) (1) Because the authority conferred by this section is designed to protect the health and safety of the citizens of this state, the authority shall be interpreted broadly to give full effect to the purpose of protecting the public health and safety and shall be construed to include the imposition of quarantines in the circumstances of natural disaster, whether occurring or imminent, or declared emergencies.

(2) In furtherance of the objectives of the quarantine, the State Veterinarian may impose restrictions not only on the affected animals themselves and the uses to which those animals may be put, but on products produced from, by, or with those animals in order to minimize the risk or spread of food-borne illness.

(3) The State Veterinarian's quarantine powers set forth in this section expressly include the power to order movement, segregation, isolation, or destruction of animals or food products, as well as the power to hold animals or food products in place.

SEC. 2. Section 10704 is added to the Food and Agricultural Code, to read:

10704. "Premises" is the farm of origin where swine were born and raised or where they have resided for a minimum of 90 continuous days immediately preceding shipment.

SEC. 3. Section 10721 of the Food and Agricultural Code is amended to read:

10721. (a) It is unlawful for any person to import any swine into this state except for immediate slaughter, unless the person procures a health certificate and import permit from the department prior to the shipment or movement of the swine.

(b) It is unlawful for any person to import any swine into this state for immediate slaughter unless the person procures an import permit from the department prior to the shipment or movement of the swine.

(c) Any person requesting an import permit shall identify the premises of the swine prior to the shipment of the swine into the state.

SEC. 4. Section 10782 of the Food and Agricultural Code is amended and renumbered to read:

10785. If the secretary finds and determines that similar regulations are necessary to control the diseases described in Section 10781 while hogs or swine are in interstate movement, the secretary shall notify the Governor so that the Governor may act pursuant to Section 9570.

SEC. 5. Section 10782 is added to the Food and Agricultural Code, to read:

10782. The department, after notice and hearing, may revoke a license granted by the department to a person conducting business as a packer, stockyard, dealer, agent, or any individual that receives, transports or deals with the marketing of swine or swine products that violates this chapter or a regulation adopted pursuant to this chapter.

SEC. 6. Section 10783 of the Food and Agricultural Code is amended and renumbered to read:

10786. (a) (1) Whenever a person violates any regulation that is adopted pursuant to this article, the department may impose an administrative penalty not to exceed one hundred dollars ($100) per individual animal for each violation.

(2) If the department issues an administrative penalty pursuant to paragraph (1), the department shall issue a Notice of Violation to the alleged offender or the offender's agent. The notice shall be written in plain English and shall inform the offender as to how the offender may challenge the administrative penalty.

(b) (1) A willful and knowing violation of any regulation that is adopted pursuant to this article is a crime, punishable as (A) an infraction by a fine of not more than one hundred dollars ($100) per individual animal for each violation, (B) a misdemeanor, or (C) a felony.

(2) Notwithstanding any other provision of law, the imposition of an administrative penalty pursuant to subdivision (a) shall not preclude prosecution of a person pursuant to paragraph (1).

SEC. 7. Section 10783 is added to the Food and Agricultural Code, to read:

10783. A previous violation of any provision of this chapter, or a regulation adopted pursuant to this chapter, is sufficient cause for the revocation of a license under Section 10782. Proof of a previous violation of this code, or a regulation adopted pursuant to this article, shall be considered an aggravating factor for a current offense.

SEC. 8. Section 10784 is added to the Food and Agricultural Code, to read:

10784. Any proceeding for the denial or revocation of a license pursuant to Section 10782 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. The department shall have all of the powers that are granted in that Chapter 5.

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

CHAPTER 448

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 1793.22 of the Civil Code is amended to read:

1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first, either (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the

repair of the nonconformity or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraph (1) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraph (1). This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third-party dispute resolution process does not exist, or if the buyer is dissatisfied with that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third-party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms if the decision is accepted by the buyer, whichever occurs later.

(d) A qualified third-party dispute resolution process shall be one that does all of the following:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

(2) Renders decisions which are binding on the manufacturer if the buyer elects to accept the decision.

(3) Prescribes a reasonable time, not to exceed 30 days after the decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.

(4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.

(9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(2) "New motor vehicle" means a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" also means a new motor vehicle that is bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. "New motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(3) "Motor home" means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.

(2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.

CHAPTER 449

An act to add Section 27317 to, and to amend the heading of Article 3 (commencing with Section 27302) of Chapter 5 of Division 12 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. The heading of Article 3 (commencing with Section 27302) of Chapter 5 of Division 12 of the Vehicle Code is amended to read:

Article 3. Safety Belts and Inflatable Restraint Systems

SEC. 2. Section 27317 is added to the Vehicle Code, to read:

27317. Any person who installs or reinstalls for compensation, or who distributes or sells any previously deployed air bag that is part of an inflatable restraint system, if the person knows that the air bag has been previously deployed, is guilty of a misdemeanor punishable by a fine of five thousand dollars ($5,000) or by confinement in the county jail for one year or by both that fine and confinement.

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.

CHAPTER 450

An act to amend, repeal, and add Section 6723 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 6723 of the Food and Agricultural Code is amended to read:

6723. (a) The secretary shall establish the minimum license fee at an amount not to exceed one hundred eighty dollars ($180).

(b) The secretary may fix the minimum license fee at an amount that is less than one hundred eighty dollars ($180) and may adjust the license fee if, after investigation and due notice, the secretary finds that the cost of administering this division and Chapter 5 (commencing with Section 53301) of Division 18, which relate to nursery stock, can be defrayed from revenues derived from the license fee in combination with those sums as provided by Sections 435 and 5822.

(c) Both of the following amounts shall be added as an additional license fee to the license fee established pursuant to subdivisions (a) and (b):

(1) An equal sum for each branch salesyard, store, or sales location that is owned and operated by the applicant in the state.

(2) (A) An acreage fee in an amount to be established by the secretary for land used in the production, storage, or sale of all nursery stock, except as provided in subparagraph (B), in excess of one acre, which the secretary determines is necessary to carry out this part and any portion of this code that relates to nursery stock. The total acreage fee shall not be less than twenty-five dollars ($25) nor more than nine hundred dollars ($900) for each licensee. The acreage fee shall be calculated using as a basis the total of the acreage at all locations where nursery stock is produced, stored, or sold.

(B) Subparagraph (A) does not apply to those licensees whose gross income from the production of cut flowers and cut ornamentals is 75 percent or greater of the gross income of their nursery.

(d) As to all the fees, the secretary may require payment of prorated amounts when necessary in the issuance of new licenses for branch salesyards, stores, or sales locations to persons already licensed pursuant to the licensing periods established in Section 6724.

(e) This section 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, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 6723 is added to the Food and Agricultural Code, to read:

6723. (a) The secretary shall establish the minimum license fee at an amount not to exceed one hundred dollars ($100).

(b) The secretary may fix the minimum license fee at an amount that is less than one hundred dollars ($100) and may adjust the license fee if, after investigation and due notice, the secretary finds that the cost of administering this division and Chapter 5 (commencing with Section 53301) of Division 18, which relate to nursery stock, can be defrayed from revenues derived from the license fee in combination with those sums as provided by Sections 435 and 5822.

(c) Both of the following amounts shall be added as an additional license fee to the license fee established pursuant to subdivisions (a) and (b):

(1) An equal sum for each branch salesyard, store, or sales location that is owned and operated by the applicant in the state.

(2) (A) An acreage fee in an amount to be established by the secretary for land used in the production, storage, or sale of all nursery stock, except as provided in subparagraph (B), in excess of one acre, which the secretary determines is necessary to carry out this part and any portion of this code that relates to nursery stock. The total acreage fee shall not be less than twenty-five dollars ($25) nor more than nine hundred dollars ($900) for each licensee. The acreage fee shall be calculated using as a basis the total of the acreage at all locations where nursery stock is produced, stored, or sold.

(B) Subparagraph (A) does not apply to those licensees whose gross income from the production of cut flowers and cut ornamentals is 75 percent or greater of the gross income of their nursery.

(d) As to all the fees, the secretary may require payment of prorated amounts when necessary in the issuance of new licenses for branch salesyards, stores, or sales locations to persons already licensed pursuant to the licensing periods established in Section 6724.

(e) This section shall become operative on July 1, 2005.

CHAPTER 451

An act to add Section 40925.3 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 40925.3 is added to the Health and Safety Code, to read:

40925.3. (a) The state board shall publish on a quarterly basis, or on a more frequent basis if determined necessary by the state board, a list of each district's rules or rule amendments that are submitted during that quarter to the United States Environmental Protection Agency as revisions to the state implementation plan. The list shall include the following dates and information, if available:

(1) The date the district adopted the revision.

(2) The date the revision was submitted to the state board.

(3) The date the state board submitted the revision to the United States Environmental Protection Agency.

(4) The date the United States Environmental Protection Agency published notice of a proposed action on the revision in the Federal Register and the nature of that proposed final action.

(5) The date the United States Environmental Protection Agency took final action of the revision and the nature of that final action.

(b) The state board may remove a revision from the list published pursuant to subdivision (a) 30 days after the United States Environmental Protection Agency takes final action on the revision.

(c) For the purposes of this section, "publish" means to post the information on the state board's Internet website, or to make the information available to any party in writing upon request.

CHAPTER 452

An act to amend Section 42943 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 42943 of the Food and Agricultural Code is amended to read:

42943. (a) It is unlawful for any person to mislabel any fruit, nut, or vegetable, or place or have any false or misleading statement or designation of quality, grade, trademark, or trade name, on any wrapper or container, or on the label or lining of any container of any fresh or dried fruit, nut, or vegetable, or on any placard which is used in connection with, or which has reference to, any fresh or dried fruit, nut, or vegetable or container, bulk lot, bulk load, load, arrangement, or display of fresh or dried fruits, nuts, or vegetables.

(b) This section requires the obliteration of incorrect or unauthorized labels or markings prior to commercial reuse of containers. The use of empty containers solely as a platform for retail display of other properly labeled containers containing the commodity for sale, or the use of containers for purposes not involving the sale of the product therein, does not constitute "commercial reuse" for these purposes.

(c) This section does not require the obliteration of old markings or labels by a grower employing a used container solely to transport, and not for display or sale, that grower's own agricultural products to or from, or both to and from, a certified farmers' market.

CHAPTER 453

An act amend Sections 5222, 5237, 5819, 6018, 6211, 6611, 7222, 7236, 8011, 8018, 8211, 8611, 8723, 9222, 9245, 12362, 12376, 12531, 12539, 12571, 12631, and 12662 of, and to add Sections 6325, 7122.3, 8325,

12302.1, and 12594 to, the Corporations Code, relating to corporations.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 5222 of the Corporations Code is amended to read:

5222. (a) Subject to subdivisions (b) and (f) of this section, any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members pursuant to Section 5310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 5616, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

(d) Except as provided in this section and Sections 5221 and 5223, a director may not be removed prior to the expiration of the director's term of office.

(e) Where a director removed under this section or Section 5221 or 5223 was chosen by designation pursuant to subdivision (d) of Section 5220, then:

(1) Where a different person may be designated pursuant to governing article or bylaw provision, the new designation shall be made.

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

SEC. 2. Section 5237 of the Corporations Code is amended to read:

5237. (a) Subject to the provisions of Section 5231, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for:

(1) The making of any distribution.

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapters 15 (commencing with Section 6510), 16 (commencing with Section 6610) and 17 (commencing with Section 6710).

(3) The making of any loan or guaranty contrary to Section 5236.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (b) of Section 5420;

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment;

(3) Under paragraph (1), (2) or (3) of subdivision (a), by the Attorney General.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guaranty.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against the persons who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the persons who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 4. Section 5819 of the Corporations Code is amended to read:

5819. (a) A corporation may restate in a single certificate the entire text of its articles as amended by filing an officers' certificate or, in circumstances where incorporators or the board may amend a corporation's articles pursuant to Sections 5811 and 5815, a certificate signed and verified by a majority of the incorporators or the board, as applicable, entitled "Restated Articles of Incorporation of (insert name of corporation)" that shall set forth the articles as amended to the date of filing of the certificate, except that the signatures and acknowledgments of the articles by the incorporators and any statements regarding the effect of any prior amendment upon memberships and any provisions of agreements of merger (other than amendments to the articles of the surviving corporation) and the names and addresses of the first directors and of the initial agent for service of process shall be omitted (except that the names and addresses of the initial agent for service of process and, if previously set forth in the articles, the initial directors, shall not be omitted prior to the time that the corporation has filed a statement under Section 6210). Those omissions are not alterations or amendments of the articles. The certificate may also itself alter or amend the articles in any respect, in which case the certificate must comply with Section 5814 or 5815, as the case may be, and Section 5816.

(b) If the certificate does not itself alter or amend the articles in any respect, it shall be approved by the board or, prior to the issuance

of any memberships and the naming and election of directors, by a majority of the incorporators, and shall be subject to the provisions of this chapter relating to an amendment of the articles not requiring approval of the members (Section 5034). If the certificate does itself alter or amend the articles, it shall be subject to the provisions of this chapter relating to the amendment or amendments so made.

(c) Restated articles of incorporation filed pursuant to this section shall supersede for all purposes the original articles and all amendments filed prior thereto.

SEC. 5. Section 6018 of the Corporations Code is amended to read:

6018. (a) Subject to the provisions of Section 6010, the merger of any number of corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a public benefit corporation or a religious corporation, the merger proceedings with respect to that corporation and any disappearing corporation shall conform to the provisions of this chapter governing the merger of corporations, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 6012, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a public benefit corporation or a religious corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 6014 and thereupon, subject to subdivision (c) of Section 5008, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 6014.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) A certificate of satisfaction of the Franchise Tax Board shall be filed when required by Section 6014 or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 6. Section 6211 of the Corporations Code is amended to read:

6211. (a) An agent designated for service of process pursuant to Section 6210 may file a signed and acknowledged written statement of resignation as that agent. Thereupon the authority of the agent to act in that capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the corporation addressed to its principal office.

(b) Under regulations adopted by the Secretary of State, the resignation of an agent may be effective if the agent disclaims having been properly appointed as the agent. Similarly, a person named as an officer or director may indicate that the person was never properly appointed as the officer or director.

SEC. 7. Section 6325 is added to the Corporations Code, to read:

6325. For a period of 60 days following the conclusion of an annual, regular, or special meeting of members, a corporation shall, upon written request from a member, forthwith inform the member of the result of any particular vote of members taken at the meeting, including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of directors, the corporation shall report the number of memberships, or votes if voted cumulatively, cast for each nominee for director. If more than one class or series of memberships voted, the report shall state the appropriate numbers by class and series of memberships.

SEC. 8. Section 6611 of the Corporations Code is amended to read:

6611. (a) Whenever a corporation has elected to wind up and dissolve a certificate evidencing that election shall forthwith be filed and a copy thereof filed with the Attorney General.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more members authorized to do so by approval of a majority of all members (Section 5033) and shall set forth:

(1) That the corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of members alone, the number of votes for the election and that the election was made by a majority of all members (Section 5033).

(3) If the election was made by the board and members pursuant to paragraph (2) of subdivision (a) of Section 6610, the certificate shall state that it was made by the board and the members in accordance with Section 5034.

(4) If the certificate is executed by a member or members, that the subscribing person or persons were authorized to execute the certificate by a majority of all members (Section 5033).

(5) If the election was made by the board pursuant to subdivision (b) of Section 6610, the circumstances showing the corporation to be within one of the categories described in that subdivision.

(c) If an election to dissolve made pursuant to subdivision (a) of Section 6610 is made by the vote of all the members of a corporation with members or by all members of the board of a corporation without members and a statement to that effect is added to the certificate of dissolution pursuant to Section 6611, the separate filing of the certificate of election pursuant to this section is not required.

SEC. 10. Section 7122.3 is added to the Corporations Code, to read:

7122.3. The Secretary of State shall not file articles for a corporation the name of which would fall within the prohibitions of Section 18104 of the Financial Code. This section shall not apply to articles filed for a corporation organized in accordance with Section 18100 of the Financial Code.

SEC. 11. Section 7222 of the Corporations Code is amended to read:

7222. (a) Subject to subdivisions (b) and (f) of this section, any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members, pursuant to Section 7310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 7615, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

(d) Except as provided in this section and Sections 7221 and 7223, a director may not be removed prior to the expiration of the director's term of office.

(e) Where a director removed under this section or Section 7221 or 7223 was chosen by designation pursuant to subdivision (d) of Section 7220, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made.

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

SEC. 12. Section 7236 of the Corporations Code is amended to read:

7236. (a) Subject to the provisions of Section 7231, directors of a corporation who approve any of the following corporate actions shall

be jointly and severally liable to the corporation for the benefit of all of the creditors entitled to institute an action under paragraph (1) or (2) of subdivision (c) or to the corporation in an action by the head organization or members under paragraph (1) or (3) of subdivision (c):

(1) The making of any distribution contrary to Chapter 4 (commencing with Section 7410).

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapter 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710).

(3) The making of any loan or guaranty contrary to Section 7235.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (c) of Section 7420.

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(3) Under paragraph (3) of subdivision (a) against any or all directors liable by any one or more members at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 7710.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guaranty, but not exceeding, in the case of an action for the benefit of creditors, the liabilities of the corporation owed to nonconsenting creditors at the time of the violation.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against the persons who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the persons who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 14. Section 8011 of the Corporations Code is amended to read:

8011. The board of each corporation that desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons may be parties to the agreement of merger. The agreement shall state all of the following:

(a) The terms and conditions of the merger.

(b) The amendments, subject to Sections 7810 and 7816, to the articles of the surviving corporation to be effected by the merger, if any; if any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name of a disappearing corporation, subject to subdivision (c) of Section 7122.

(c) The amendments to the bylaws of the surviving corporation to be effected by the merger, if any.

(d) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(e) The manner, if any, of converting memberships or securities of the constituent corporations into memberships or securities of the surviving corporation and, if any memberships or securities of any of the constituent corporations are not to be converted solely into memberships or securities of the surviving corporation, the cash, property, rights or securities of any corporation that the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, property, rights or securities of any corporation may be in addition to or in lieu of memberships or securities of the surviving corporation, or that the memberships are to be canceled without consideration.

(f) Other details or provisions as are desired, if any, including, without limitation, if not prohibited by this chapter, a provision for the payment of cash in lieu of fractional memberships or for any other arrangement with respect thereto.

SEC. 15. Section 8018 of the Corporations Code is amended to read:

8018. (a) Subject to the provisions of Section 8010, the merger of any number of corporations with any number of foreign corporations, foreign business corporations or domestic corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a mutual benefit corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter and other applicable laws of this state, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 8012 the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a mutual benefit corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 8014 and thereupon, subject to subdivision (c) of Section 5008, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, or foreign business corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 8014.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the

merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) A certificate of satisfaction of the Franchise Tax Board shall be filed when required by Section 8014 or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 16. Section 8211 of the Corporations Code is amended to read:

8211. (a) An agent designated for service of process pursuant to Section 8210 may file a signed and acknowledged written statement of resignation as that agent. Thereupon the authority of the agent to act in that capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the corporation addressed to its principal office.

(b) Under regulations adopted by the Secretary of State, the resignation of an agent may be effective if the agent disclaims having been properly appointed as the agent. Similarly, a person named as an officer or director may indicate that the person was never properly appointed as the officer or director.

SEC. 17. Section 8325 is added to the Corporations Code, to read:

8325. For a period of 60 days following the conclusion of an annual, regular, or special meeting of members, a corporation shall, upon written request from a member, forthwith inform the member of the result of any particular vote of members taken at the meeting, including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of directors, the corporation shall report the number of memberships, or votes if voted cumulatively, cast for each nominee for director. If more than one class or series of memberships voted, the report shall state the appropriate numbers by class and series of memberships.

SEC. 18. Section 8611 of the Corporations Code is amended to read:

8611. (a) Whenever a corporation has elected to wind up and dissolve a certificate evidencing that election shall forthwith be filed. A copy of that certificate shall be filed with the Attorney General if the corporation holds assets in charitable trust or has a charitable dissolution clause.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more members authorized to do so by approval of a majority of all members (Section 5033) and shall set forth:

(1) That the corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of members alone, the number of votes for the election and that the election was made by a majority of all members (Section 5033).

(3) If the election was made by the board and the members pursuant to paragraph (2) of subdivision (a) of Section 8610, the certificate shall state that it was made by the board and the members in accordance with Section 5034.

(4) If the certificate is executed by a member or members, that the subscribing person or persons were authorized to execute the certificate a majority of all members (Section 5033).

(5) If the election was made by the board pursuant to subdivision (b) of Section 8610, the circumstances showing the corporation to be within one of the categories described in that subdivision.

(c) If an election to dissolve made pursuant to subdivision (a) of Section 8610 is made by the vote of all the members of a corporation with members or by all members of the board of a corporation without members and a statement to that effect is added to the certificate of dissolution pursuant to Section 8611, the separate filing of the certificate of election pursuant to this section is not required.

SEC. 19. Section 8723 of the Corporations Code is amended to read:

8723. (a) (1) Causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against any of the following:

(A) Against the dissolved corporation, to the extent of its undistributed assets, including, without limitation, any insurance assets held by the corporation that may be available to satisfy claims.

(B) If any of the assets of the dissolved corporation have been distributed to other persons, against those persons to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less.

The total liability of a person under this section may not exceed the total amount of assets of the dissolved corporation distributed to that person upon dissolution of the corporation.

(2) Except as set forth in subdivision (c), all causes of action against a person to whom assets were distributed arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that person prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the corporation.

(3) As a matter of procedure only, and not for purposes of determining liability, persons to whom assets of a dissolved corporation are distributed may be sued in the name of the corporation upon any cause of action against the corporation. This

section does not affect the rights of the corporation or its creditors under Section 2009, or the rights, if any, of creditors under the Uniform Fraudulent Transfer Act, which may arise against persons to whom those assets are distributed.

(4) This subdivision applies to corporations dissolved on or after January 1, 2000. Corporations dissolved prior to that date are subject to the law in effect prior to that date.

(b) Summons or other process against the corporation may be served by delivering a copy thereof to an officer, director or person having charge of its assets or, if none of these persons can be found, to any agent upon whom process might be served at the time of dissolution. If none of those persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved corporation by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state, with an additional copy of the summons or other process and order being delivered to the Attorney General in the case of a corporation that at the commencement of the dissolution proceedings held assets in charitable trust. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State, or in the case of a corporation that at the commencement of the dissolution proceedings held assets in charitable trust, upon the 10th day after the later of delivery of process to the Secretary of State or Attorney General.

(c) The corporation shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in that action shall bind each of its members or other persons having any equity or other interest in the corporation, to the extent of their interest therein, and that action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in that action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

(d) Upon receipt of that process and the fee therefor, the Secretary of State forthwith shall give notice to the corporation as provided in Section 1702.

SEC. 20. Section 9222 of the Corporations Code is amended to read:

9222. (a) Except as provided in the articles or bylaws and subject to subdivision (b) of this section, any or all directors may be removed without cause if the removal is approved by the members (Section 5034).

(b) Except for a corporation having no members pursuant to Section 9310:

(1) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(2) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

SEC. 21. Section 9245 of the Corporations Code is amended to read:

9245. (a) Subject to the provisions of Section 9241, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for:

(1) The making of any distribution.

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Section 9680 and those sections made applicable to this part by Section 9680.

(3) The making of any loan or guaranty contrary to Section 9241.

(b) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (b) of Section 9610;

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(c) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guaranty.

(d) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(e) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation as follows:

(1) With respect to paragraph (1) of subdivision (a), against members who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the members who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 23. Section 12302.1 is added to the Corporations Code, to read:

12302.1. The Secretary of State shall not file articles for a corporation the name of which would fall within the prohibitions of Section 18104 of the Financial Code. This section shall not apply to articles filed for a corporation organized in accordance with Section 18100 of the Financial Code.

SEC. 24. Section 12362 of the Corporations Code is amended to read:

12362. (a) Subject to subdivisions (b), (c) and (g), any or all directors may be removed without cause if one of the following applies:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 12223).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 12224).

(b) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 12485, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected; and

(c) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(d) Any reduction of the authorized number of directors or any amendment reducing the number of class of directors does not remove any director prior to the expiration of the director's term of office.

(e) Except as provided in this section and Sections 12361 and 12363, a director may not be removed prior to the expiration of the director's term of office.

(f) Where a director removed under this section or Section 12361 or 12363 was chosen by designation pursuant to subdivision (d) of Section 12360, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made; or

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(g) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, the provisions shall also provide for removal of those directors and any director so designated may only be removed as so provided.

SEC. 25. Section 12376 of the Corporations Code is amended to read:

12376. (a) Subject to the provisions of Section 12371, directors of a corporation who approve any of the following corporate actions are jointly and severally liable to the corporation for the benefit of all of the creditors entitled to institute an action under paragraph (1) or (2) of subdivision (c) or to the corporation in an action by members under paragraph (3) of subdivision (c):

(1) The making of any distribution or purchase or redemption of memberships contrary to Chapter 4 (commencing with Section 12450).

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapters 15 (commencing with Section 12620), 16 (commencing with Section 12630), and 17 (commencing with Section 12650).

(3) The making of any loan or guarantee contrary to Section 12375.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (c) of Section 12455.

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action

who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(3) Under paragraph (3) of subdivision (a) against any or all directors liable by any one or more members at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 12490.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guarantee, but not exceeding, in the case of an action for the benefit of creditors, the liabilities of the corporation owed to nonconsenting creditors at the time of the violation.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against the persons who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the persons who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guarantee.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 27. Section 12531 of the Corporations Code is amended to read:

12531. The board of each corporation that desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons may be parties to the agreement of merger. The agreement shall state all of the following:

(a) The terms and conditions of the merger.

(b) The amendments, subject to Sections 12500 and 12505 to the articles of the surviving corporation to be effected by the merger, if any; if any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name of a disappearing corporation, subject to subdivision (c) of Section 12302.

(c) The amendments to the bylaws of the surviving corporation to be effected by the merger, if any.

(d) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(e) The manner, if any, of converting memberships or securities of the constituent corporations into memberships or securities of the surviving corporation and, if any memberships or securities of any of the constituent corporations are not to be converted solely into memberships or securities of the surviving corporation, the cash, property, rights or securities of any corporation that the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, property, rights or securities of any corporation may be in addition to or in lieu of memberships or securities of the surviving corporation or that the memberships are to be canceled without consideration.

(f) Other details or provisions as are desired, if any, including, without limitation, if not prohibited by this chapter, a provision for the payment of cash in lieu of fractional memberships or for any other arrangement with respect thereto.

SEC. 28. Section 12539 of the Corporations Code is amended to read:

12539. (a) Subject to the provisions of Section 12530, the merger of any number of corporations with any number of foreign corporations, foreign business corporations, or domestic corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a cooperative corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter and other applicable laws of this state, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 12533, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a cooperative corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 12535 and thereupon, subject to subdivision (c) of Section 12214, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the

jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of the filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) A certificate of satisfaction of the Franchise Tax Board shall be filed when required by Section 23334 of the Revenue and Taxation Code.

SEC. 29. Section 12571 of the Corporations Code is amended to read:

12571. (a) An agent designated for service of process pursuant to Section 12570 may file a signed and acknowledged written statement of resignation as that agent. Thereupon the authority of the agent to act in that capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the corporation addressed to its principal office.

(b) Under regulations adopted by the Secretary of State, the resignation of an agent may be effective if the agent disclaims having been properly appointed as the agent. Similarly, a person named as an officer or director may indicate that the person was never properly appointed as the officer or director.

SEC. 30. Section 12594 is added to the Corporations Code, to read:

12594. For a period of 60 days following the conclusion of an annual, regular, or special meeting of members, a corporation shall, upon written request from a member, forthwith inform the member of the result of any particular vote of members taken at the meeting,

including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of directors, the corporation shall report the number of memberships, or votes if voted cumulatively, cast for each nominee for director. If more than one class or series of memberships voted, the report shall state the appropriate numbers by class and series of memberships.

SEC. 31. Section 12631 of the Corporations Code is amended to read:

12631. (a) Whenever a corporation has elected to wind up and dissolve a certificate evidencing that election shall forthwith be filed.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more members authorized to do so by approval of a majority of all members (Section 12223) and shall set forth:

(1) That the corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of members alone, the number of votes for the election and that the election was made by persons holding at least a majority of the voting power.

(3) If the certificate is executed by a member or members, that the subscribing person or persons were authorized to execute the certificate by persons representing at least a majority of the voting power.

(4) If the election was made by the board pursuant to subdivision (b) of Section 12630, the certificate shall also set forth the circumstances showing the corporation to be within one of the categories described in that subdivision.

(c) If an election to dissolve made pursuant to subdivision (a) of Section 12630 is made by the vote of all the members of a corporation with members or by all members of the board of a corporation without members and a statement to that effect is added to the certificate of dissolution pursuant to Section 12631, the separate filing of the certificate of election pursuant to this section is not required.

SEC. 32. Section 12662 of the Corporations Code is amended to read:

12662. (a) (1) Causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against any of the following:

(A) Against the dissolved corporation, to the extent of its undistributed assets; including, without limitation, any insurance assets held by the corporation that may be available to satisfy claims.

(B) If any of the assets of the dissolved corporation have been distributed to other persons, against those persons to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less.

The total liability of a person under this section may not exceed the total amount of assets of the dissolved corporation distributed to that person upon dissolution of the corporation.

(2) Except as set forth in subdivision (c), all causes of action against a person to whom assets were distributed arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that person prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the corporation.

(3) As a matter of procedure only, and not for purposes of determining liability, persons to whom assets of a dissolved corporation are distributed may be sued in the name of the corporation upon any cause of action against the corporation. This section does not affect the rights of the corporation or its creditors under Section 2009, or the rights, if any, of creditors under the Uniform Fraudulent Transfer Act, which may arise against persons to whom such assets are distributed.

This subdivision applies to corporations dissolved on or after January 1, 2000. Corporations dissolved prior to that date are subject to the law in effect prior to that date.

(b) Summons or other process against a dissolved corporation may be served by delivering a copy thereof to an officer, director or person having charge of its assets or, if that person cannot be found, to any agent upon whom process might be served at the time of dissolution. If none of these persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved corporation by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state.

(c) Every dissolved corporation shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in any quiet title action shall bind each and all of its members or other persons having any equity or other interest in that corporation, to the extent of their interest therein, and that action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in any quiet title action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

(d) Upon receipt of that process and the fee therefor, the Secretary of State forthwith shall give notice to the corporation as provided in Section 1702.

CHAPTER 454

An act to add Article 10.5 (commencing with Section 6175) to Chapter 4 of Division 3 of the Business and Professions Code, relating to financial services by lawyers.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Article 10.5 (commencing with Section 6175) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 10.5. Provision of Financial Services by Lawyers

6175. As used in this article, the following definitions apply:

(a) "Lawyer" means a member of the State Bar or a person who is admitted and in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof, and includes any agent of the lawyer or law firm or law corporation doing business in the state.

(b) "Client" means a person who has, within the three years preceding the sale of financial products by a lawyer to that person, employed that lawyer for legal services. The settlor and trustee of a trust shall be considered one person.

(c) "Elder" and "dependent elder" shall have the meaning as defined in Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

(d) "Financial products" means long-term care insurance, life insurance, and annuities governed by the Insurance Code, or its successors.

(e) "Sell" means to act as a broker for a commission.

6175.3. A lawyer, while acting as a fiduciary, may sell financial products to a client who is an elder or dependent adult with whom the lawyer has or has had, within the preceding three years, an attorney-client relationship, if the transaction or acquisition and its terms are fair and reasonable to the client, and if the lawyer provides

that client with a disclosure that satisfies all of the following conditions:

(a) The disclosure is in writing and is clear and conspicuous. The disclosure shall be a separate document, appropriately entitled, in 12-point print with one inch of space on all borders.

(b) The disclosure, in a manner that should reasonably have been understood by that client, is signed by the client, or the client's conservator, guardian, or agent under a valid durable power of attorney.

(c) The disclosure states that the lawyer shall receive a commission and sets forth the amount of the commission and the actual percentage rate of the commission, if any. If the actual amount of the commission cannot be ascertained at the outset of the transaction, the disclosure shall include the actual percentage rate of the commission or the alternate basis upon which the commission will be computed, including an example of how the commission would be calculated.

(d) The disclosure identifies the source of the commission and the relationship between the source of the commission and the person receiving the commission.

(e) The disclosure is presented to the client at or prior to the time the recommendation of the financial product is made.

(f) The disclosure advises the client that he or she may obtain independent advice regarding the purchase of the financial product and will be given a reasonable opportunity to seek that advice.

(g) The disclosure contains a statement that the financial product may be returned to the issuing company within 30 days of receipt by the client for a refund as set forth in Section 10127.10 of the Insurance Code.

(h) The disclosure contains a statement that if the purchase of the financial product is for the purposes of Medi-Cal planning, the client has been advised of other appropriate alternatives, including spend-down strategies, and of the possibility of obtaining a fair hearing or obtaining a court order.

6175.4. (a) A client who suffers any damage as the result of a violation of this article by any lawyer may bring an action against that person to recover or obtain one or more of the following remedies:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than five thousand dollars ($5,000).

(2) An order enjoining the violation.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) A client may seek and be awarded, in addition to the remedies specified in subdivision (a), an amount not to exceed ten thousand dollars ($10,000) where the trier of fact (1) finds that the client 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 of the Civil Code, and (3) finds that an additional award is appropriate. Judgment in a class action may award each class member the additional award where the trier of fact has made the foregoing findings.

6175.5. A violation of this article by a member shall be cause for discipline by the State Bar.

6175.6. The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agencies for review and possible disciplinary action.

6176. Nothing in this article shall be deemed to limit, reduce, or preclude enforcement of any obligation, statute, State Bar Rule of Professional Conduct, or court rule, including, but not limited to, those relating to the lawyer's fiduciary duties, that are otherwise applicable to any transaction in which a lawyer is involved.

CHAPTER 455

An act relating to taxation.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. On or before January 15, 2000, the State Board of Equalization shall report to the Legislature on the sales or use tax reported on returns submitted for the reporting period for the 1998 calendar year by graphic artists, cartoonists, illustrators, commercial photographers, and advertising agencies. The report shall also include the amount of sales or use tax assessed by the State Board of Equalization in any audits covering the reporting period for the 1997 calendar year that are attributable to unreported transactions of graphic artists, cartoonists, illustrators, commercial photographers, and advertising agencies. The report shall be itemized according to each of these categories of taxpayers.

CHAPTER 456

An act to amend Sections 7500.3, 7502.1, 7502.2, 7503.10, 7504, 7506.3, 7506.5, 7506.9, 7506.11, 7506.13, 7506.14, 7507.2, 7510.1, and 7511 of the Business and Professions Code, and to amend Sections 615, 22850.5, and 27907 of the Vehicle Code, relating to collateral recovery.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 7500.3 of the Business and Professions Code is amended to read:

7500.3. A repossession agency shall not include any of the following:

(a) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(b) Any person organized, chartered, or holding a license or authorization certificate to make loans pursuant to the laws of this state or the United States who is subject to supervision by any official or agency of this state or the United States.

(c) An attorney at law in performing his or her duties as an attorney at law.

(d) The legal owner of collateral which is subject to a security agreement.

(e) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties.

(f) A person employed exclusively and regularly by one employer in connection with the affairs of that employer only, and where there exists an employer-employee relationship.

(g) A qualified certificate holder or a registrant when performing services for, or on behalf of, a licensee.

SEC. 1.5. Section 7502.1 of the Business and Professions Code is amended to read:

7502.1. (a) Any person who violates any provision of this chapter, or who conspires with another person to violate any provision of this chapter, or who knowingly engages a nonexempt unlicensed person to repossess collateral on his or her behalf is guilty of a misdemeanor, and is punishable by a fine of five thousand dollars ($5,000), or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(b) Within existing resources, the Commissioner of Financial Institutions, the Commissioner of Corporations, and the Director of Motor Vehicles may each designate employees to investigate and report on violations of this chapter by any of the licensees of their respective departments. Those employees are authorized to actively cooperate with the bureau in the investigation of those activities.

(c) A proceeding to impose the penalties specified in subdivision (a) may be brought in any court of competent jurisdiction in the name of the people of the State of California by the Attorney General or by any district attorney or city attorney, or with the consent of the

district attorney, by the city prosecutor in any city or city and county having a full-time city prosecutor, for the jurisdiction in which the violation occurred. If the action is brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered. If the action is brought by the Attorney General, all of the penalty collected shall be deposited in the Private Security Services Fund.

SEC. 2. Section 7502.2 of the Business and Professions Code is amended to read:

7502.2. (a) Any financial institution that knowingly engages a nonexempt unlicensed person to repossess collateral on its behalf is guilty of a misdemeanor, and is punishable by a fine of five thousand dollars ($5,000).

(b) Within existing resources, the Commissioner of Financial Institutions and the Commissioner of Corporations may each designate employees to investigate and report on violations of this section by any of the licensees of their respective departments. Those employees are authorized to actively cooperate with the bureau in the investigation of those activities.

(c) A proceeding to impose the fine specified in subdivision (a) may be brought in any court of competent jurisdiction in the name of the people of the State of California by the Attorney General or by any district attorney or city attorney, or with the consent of the district attorney, by the city prosecutor in any city or city and county having a full-time city prosecutor, for the jurisdiction in which the violation occurred. If the action is brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered. If the action is brought by the Attorney General, all of the penalty collected shall be deposited in the Private Security Services Fund.

SEC. 3. Section 7503.10 of the Business and Professions Code is amended to read:

7503.10. (a) An original repossession agency license shall expire one year following the date of issuance, unless renewed as provided in this chapter.

(b) A renewal repossession agency license shall expire two years following the date of renewal, unless renewed as provided in this chapter.

(c) At least 60 days prior to the expiration of the license, the bureau shall mail to the licensee a renewal form prescribed by the

director. To renew an unexpired license, the licensee shall complete and mail the renewal form to the bureau, pay any and all fines assessed pursuant to Section 7501.7 and resolved in accordance with the provisions of that section, and pay the renewal fee prescribed by this chapter.

(d) Upon the issuance of the initial license or renewal license, the bureau shall issue to the licensee a suitable pocket identification card which includes a photograph of the licensee. The photograph shall be of a size prescribed by the bureau. The card shall contain the name of the licensee's company.

SEC. 4. Section 7504 of the Business and Professions Code is amended to read:

7504. (a) Except as otherwise provided in this chapter, an applicant for a qualification certificate shall comply with all of the following:

(1) Be at least 18 years of age.

(2) Have been, for at least two years of lawful experience, during the five years preceding the date on which his or her application is filed, a registrant or have had two years of lawful experience in recovering collateral within this state. Lawful experience means experience in recovering collateral as a registrant pursuant to this chapter or as a salaried employee of a financial institution or vehicle dealer.

Two years' experience shall consist of not less than 4,000 hours of actual compensated work performed by the applicant preceding the filing of an application.

An applicant shall certify that he or she has completed the claimed hours of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer, licensee, financial institution, or vehicle dealer, subject to independent verification by the director as he or she may determine. In the event of inability of an applicant to supply the written certifications from the employer, licensee, financial institution or vehicle dealer in whole or in part, applicants may offer other written certifications from other persons substantiating their experience for consideration by the director. All certifications shall include a statement that representations made are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant or the person submitting the certification.

(3) Complete and forward to the bureau a qualified certificate holder application which shall be on a form prescribed by the director. The application shall be accompanied by two recent photographs of the applicant, of a type prescribed by the director, and two classifiable sets of his or her fingerprints. The residence address, residence telephone number, and driver's license number of each qualified certificate holder or applicant for a qualification certificate, if requested, shall be confidential pursuant to the Information Practices Act of 1977 (Chapter 1 (commencing with

Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall not be released to the public.

(4) Pass the required examination.

(5) Pay the required application and examination fees to the bureau.

The amendments made to this section during the 1990 portion of the 1989–90 Regular Session shall only apply to applications filed on or after January 1, 1992.

(b) Upon the issuance of the initial qualification certificate or renewal qualification certificate, the bureau shall issue to the certificate holder a suitable pocket identification card which includes a photograph of the certificate holder. The photograph shall be of a size prescribed by the bureau. The card shall contain the name of the licensee with whom the certificate holder is employed.

SEC. 5. Section 7506.3 of the Business and Professions Code is amended to read:

7506.3. Except as otherwise provided in this article, every person entering the employ of, or contracting with, a licensee or multiple licensee after the effective date of this article shall immediately complete an application for an initial registration or a reregistration and shall file the appropriate application with the chief within 15 working days after the commencement of employment or contracted services for the licensee or multiple licensee for whom the applicant is employed or contracted. Applicants for registration must be at least 18 years of age.

(a) An initial registration application shall be required of those persons who have not previously submitted an application for registration, or been registered as a registrant.

(b) A reregistration application shall be required of those persons who have previously submitted or been registered as a registrant.

(c) No registrant of a multiple licensee shall be required to file more than one application for registration or reregistration for each multiple licensee.

SEC. 6. Section 7506.5 of the Business and Professions Code is amended to read:

7506.5. All information obtained on the application shall be confidential pursuant to the Information Practices Act (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall not be released to the public except for the registrant's full name, the licensee's name and address, and the registration number. The application shall be verified and shall include:

(a) The full name, residence address, residence telephone number, date and place of birth, and driver's license number of the applicant or registrant.

(b) A statement listing any and all names used by the applicant or registrant, other than the name by which he or she is currently

known. If the applicant or registrant has never used a name other than his or her true name, this fact shall be set forth in the statement.

(c) The name and address of the licensee and the date the employment or contract commenced.

(d) The title of the position occupied by the applicant or registrant and a description of his or her duties.

(e) Two recent photographs of the applicant or registrant, of a type prescribed by the chief, and two classifiable sets of his or her fingerprints.

SEC. 6.5. Section 7506.5 of the Business and Professions Code is amended to read:

7506.5. All information obtained on the application shall be confidential pursuant to the Information Practices Act (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall not be released to the public except for the registrant's full name, the licensee's name and address, and the registration number. The application shall be verified and shall include:

(a) The full name, residence address, residence telephone number, date and place of birth, and driver's license number of the applicant or registrant.

(b) A statement listing any and all names used by the applicant or registrant, other than the name by which he or she is currently known. If the applicant or registrant has never used a name other than his or her true name, this fact shall be set forth in the statement.

(c) The name and address of the licensee and the date the employment or contract commenced.

(d) The title of the position occupied by the applicant or registrant and a description of his or her duties.

(e) Two recent photographs of the applicant or registrant, of a type prescribed by the chief, and two classifiable sets of his or her fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check.

(f) The bureau may impose a fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

SEC. 7. Section 7506.9 of the Business and Professions Code is amended to read:

7506.9. (a) Upon the issuance of the initial registration, reregistration or renewal, the chief shall issue to the registrant a suitable pocket identification card. At the request of the registrant, the identification card may include a photograph of the registrant. The photograph shall be of a size prescribed by the bureau. The card shall contain the name of the licensee with whom the registrant is registered. The applicant may request to be issued an enhanced pocket card that shall be composed of durable material and may incorporate technologically advanced security features. The bureau

may charge a fee sufficient to reimburse the department for costs for furnishing the enhanced pocket card. The fee charged may not exceed the actual cost for system development, maintenance, and processing necessary to provide the service, and may not exceed six dollars ($6). If the applicant does not request an enhanced card, the department shall issue a standard card at no cost to the applicant.

(b) Until the registration certificate is issued or denied, a person may be assigned to work with a temporary registration on a secure form prescribed by the chief, and issued by the qualified certificate holder, that has been embossed by the bureau with the state seal for a period not to exceed 120 days from the date the employment or contract commenced, provided the person signs a declaration under penalty of perjury that he or she has not been convicted of a felony or committed any other act constituting grounds for denial of a registration pursuant to Section 7506.8 (unless he or she declares that the conviction of a felony or the commission of a specified act or acts occurred prior to the issuance of a registration by the chief and the conduct was not the cause of any subsequent suspension or termination of a registration), and that he or she has read and understands the provisions of this chapter.

(c) The chief shall issue an additional temporary registration for not less than 60 days nor more than 120 days, if the chief determines that the investigation of the applicant will take longer to complete than the initial temporary registration time period.

(d) No person shall perform the duties of a registrant for a licensee unless the person has in his or her possession a valid repossessor registration card or evidence of a valid temporary registration or registration renewal as described in subdivision (b) of this section or subdivision (c) of Section 7506.10. Every person, while engaged in any activity for which licensure is required, shall display his or her valid pocket card as provided by regulation.

SEC. 8. Section 7506.11 of the Business and Professions Code is amended to read:

7506.11. (a) Each registration is valid until the registrant ceases performing services for the licensee indicated on the registration card or until the registration expires.

(b) Each person registered under this article shall notify the chief, in writing, within 30 days of any change in employment or contract status with a licensee. If the person ceases to be employed by or perform services for a licensee, the licensee shall notify the chief, in writing, within 30 days. The registered individual shall surrender his or her registration card to the licensee. The licensee shall forward the registration card to the chief. If at some subsequent time the person is again employed or retained by a licensee, he or she shall apply for reregistration in the manner provided in this article.

(c) Each registrant, while registered, shall notify the chief, in writing, within 30 days after any change in his or her residence address.

SEC. 9. Section 7506.13 of the Business and Professions Code is amended to read:

7506.13. (a) The licensee shall at all times be responsible for ascertaining that his or her registrants are currently registered or have made proper application for registration as provided in this article. The licensee may not have in his or her employment or under contract a person subject to registration who has not registered within the time required or whose registration has expired or been revoked, denied, suspended, or canceled.

(b) The bureau shall keep current and accurate records of all persons registered under this article.

SEC. 10. Section 7506.14 of the Business and Professions Code is amended to read:

7506.14. If the chief determines that continued services by an applicant for registration in his or her current capacity may present undue hazard to public safety, the licensee, upon proper notification from the chief, shall suspend the applicant from rendering services in that capacity until the licensee is notified in writing by the chief within 60 days from the date of notification of suspension that the applicant's registration has been approved or denied.

SEC. 11. Section 7507.2 of the Business and Professions Code is amended to read:

7507.2. (a) A licensee is responsible for those actions that are performed in violation of this chapter by his or her registrants, including his or her manager, when acting within the course and scope of his or her employment or contract.

(b) Each licensee shall maintain a file or record of the name, address, commencing date of employment or retention, and position of each registrant, and the date of termination of the employment or contract when a registrant is terminated. The file and records, together with usual compensation records, shall be available for inspection by the bureau, and copies thereof, and information pertaining thereto or contained therein, shall be submitted to the bureau upon request.

SEC. 12. Section 7510.1 of the Business and Professions Code is amended to read:

7510.1. In addition to any other remedies authorized by this chapter, the director may suspend or revoke a repossession agency license, a qualification certificate, or registration issued under this chapter if the director determines that the licensee or the licensee's manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, partners, registrants, employees, or its manager, has:

(a) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated any provisions of this chapter.

(c) Violated any rule of the director adopted pursuant to authority contained in this chapter.

(d) Been convicted of a felony or any crime substantially related to the repossession agency business including illegally using, carrying, or possessing a deadly weapon.

(e) Committed or permitted any registrant or employee to commit any act while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license.

(f) Unlawfully committed assault, battery, or kidnapping, or used force or violence on any person.

(g) Knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(h) Been convicted of a violation of Section 148 of the Penal Code, resisting or obstructing a public officer.

(i) Committed any act which is a ground for denial of an application for license under this chapter.

(j) Committed any act prohibited by Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1 of the Penal Code.

(k) Committed any act in the course of the licensee's business constituting dishonesty or fraud, including, but not limited to:

(1) Knowingly making a false statement relating to evidence or information obtained in the course of employment or while under contract, or knowingly publishing a slander or a libel in the course of business.

(2) Using illegal means in the collection or attempted collection of a debt or obligation.

(*l*) Represented that the licensee has an office and conducts business at a specific address when that is not the case.

SEC. 13. Section 7511 of the Business and Professions Code is amended to read:

7511. Effective July 1, 1998, the bureau shall establish and assess fees and penalties for licensure and registration as displayed in this section. The fees prescribed by this chapter are as follows:

(a) The application fee for an original repossession agency license may not exceed eight hundred twenty-five dollars ($825).

(b) The application fee for an original qualification certificate may not exceed three hundred twenty-five dollars ($325).

(c) The renewal fee for a repossession agency license may not exceed seven hundred fifteen dollars ($715) biennially.

(d) The renewal fee for a license as a qualified certificate holder may not exceed four hundred fifty dollars ($450) biennially.

(e) Notwithstanding Section 163.5, the reinstatement fee for a repossession agency license required pursuant to Sections 7503.11 and 7505.3 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(f) Notwithstanding Section 163.5, the reinstatement fee for a license as a qualified certificate holder required pursuant to Sections 7504.7 and 7503.11 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(g) A fee for reexamination of an applicant for a qualified manager may not exceed thirty dollars ($30).

(h) An initial registrant registration fee may not exceed seventy-five dollars ($75), a registrant reregistration fee may not exceed thirty dollars ($30), and a registrant biennial renewal fee may not exceed sixty dollars ($60) per registration. Notwithstanding Section 163.5 and this subdivision, the reregistration fee for a registrant whose registration expired more than one year prior to the filing of the application for reregistration may not exceed seventy-five dollars ($75).

(i) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

(j) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(k) The director shall furnish one copy of any issue or edition of the licensing law and rules and regulations to any applicant or licensee without charge. The director shall charge and collect a fee not to exceed ten dollars ($10) plus sales tax for each additional copy which may be furnished on request to any applicant or licensee, and for each copy furnished on request to any other person.

(*l*) The processing fee for the assignment of a repossession agency license pursuant to Section 7503.9 may not exceed one hundred twenty-five dollars ($125).

This section shall become operative July 1, 1998, except that the changes to this section enacted during the first year of the 1999–2000 Regular Session shall become operative January 1, 2000. Notwithstanding the operative date of this section, before, on, or after July 1, 1998, the bureau may adopt regulations specifying the fees authorized by this section.

SEC. 14. Section 615 of the Vehicle Code is amended to read:

615. (a) A "tow truck" is a motor vehicle which has been altered or designed and equipped for, and primarily used in the business of, transporting vehicles by means of a crane, hoist, tow bar, tow line, or dolly or is otherwise primarily used to render assistance to other vehicles. A "roll-back carrier" designed to carry up to two vehicles is also a tow truck. A trailer for hire that is being used to transport a vehicle is a tow truck. "Tow truck" does not include an automobile dismantlers' tow vehicle or a repossessor's tow vehicle.

(b) "Repossessor's tow vehicle" means a tow vehicle which is registered to a repossessor licensed or registered pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code that is used exclusively in the course of the repossession business.

(c) "Automobile dismantlers' tow vehicle" means a tow vehicle which is registered by an automobile dismantler licensed pursuant to Chapter 3 (commencing with Section 11500) of Division 5 and which is used exclusively to tow vehicles owned by that automobile dismantler in the course of the automobile dismantling business.

SEC. 15. Section 22850.5 of the Vehicle Code is amended to read:

22850.5. (a) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution establishing procedures for the release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. Those administrative costs may be waived by the local or state authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.

(b) The following apply to any charges imposed for administrative costs pursuant to subdivision (a):

(1) The charges shall only be imposed on the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lienholder's total charges and proper administrative costs.

(2) Any charges shall be collected by the local or state authority only from the registered owner or an agent of the registered owner.

(3) The charges shall be in addition to any other charges authorized or imposed pursuant to this code.

(4) No charge may be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner of the vehicle or an agent of that registered or legal owner. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.

SEC. 16. Section 27907 of the Vehicle Code is amended to read:

27907. There shall be displayed in a conspicuous place on both the right and left side of a tow truck, a repossessor's tow vehicle, or an automobile dismantler's tow vehicle used to tow or carry vehicles a sign showing the name of the company or the owner or operator of the tow truck or tow vehicle. The sign shall also contain the business address and telephone number of the owner or driver. The letters and numbers of the sign shall not be less than 2 inches in height and shall be in contrast to the color of the background upon which they are placed.

A person licensed as a repossession agency pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or a registrant of the agency, may use the license number issued to the agency by the Department of Consumer Affairs in lieu of a name, business address, and telephone number.

SEC. 17. Section 6.5 of this bill incorporates amendments to Section 7506.5 of the Business and Professions Code proposed by both this bill and AB 341. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 7506.5 of the Business and Professions Code, and (3) this bill is enacted after AB 341, in which case Section 6 of this bill shall not become operative.

SEC. 18. The Legislature finds and declares that unlawful unlicensed activity by persons performing personal property repossessions, and the unlawful hiring of those persons, are not in consumers' best interests. It is the Legislature's intent in amending Sections 7502.1 and 7502.2 of the Business and Professions Code in Sections 1.5 and 2 of this act that state agencies cooperate with one another to curtail unlawful unlicensed activity.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 457

An act to amend Sections 18717, 19816.20, 19818.8, 19858.3, 19858.4, 19858.5, 19863.1, 20400, 20405.1, 21547, and 22754 of, to add Sections 21547.5 and 22955.55 to, and to repeal Sections 19816.23, 19858.6, 20068.2, 20405.3, 22811.6, and 22957.5 of, the Government Code, and to amend Sections 10295 and 10344.1 of the Public Contract Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 18717 of the Government Code is amended to read:

18717. (a) The board shall develop objective criteria for determining the application of the state safety category of membership in the Public Employees' Retirement System to positions in the state civil service. Upon the request of the Department of Personnel Administration or an employee organization, the board shall then determine which classes of positions meet all or part of the elements of the criteria and shall list

the positions in order based upon the degree in which their duties meet the criteria. An employee organization that requests a determination with respect to a class of position previously determined not to meet the criteria shall submit a written argument supporting the assertion that the class of position meets the criteria. The board, if it finds the written argument to be unpersuasive, may refuse to commence determination proceedings unless and until either the Department of Personnel Administration requests a determination with respect to that class of position or the employee organization submits to the board a supporting argument which the board finds persuasive. The board shall indicate to the department whether the classes qualify for state safety membership. The Public Employees' Retirement System and employing agencies shall assist and cooperate with the board in preparation of the report.

(b) The board shall transmit the report directly to the department, which shall make a copy available to the exclusive representative of any employee organization upon its written request.

(c) The department may use the results of the study in subsequent negotiations with the exclusive employee representatives; however, the report shall in no way obligate the department to take any action or make any recommendations as it relates to state safety membership.

(d) The department shall not recommend safety membership for any class of employees who have not been determined by the board to meet the established criteria.

(e) For classes of employees recommended for state safety membership by a memorandum of understanding reached pursuant to Section 3517.5, a copy of the report authorized under this section shall be submitted to the Legislature with the signed memorandum of understanding.

(f) This section does not apply to state employees who are subject to Sections 19816.20 and 20405.1.

SEC. 2. Section 19816.20 of the Government Code is amended to read:

19816.20. Notwithstanding Section 18717, this section shall apply to state employees in state bargaining units that have agreed to these provisions in a memorandum of understanding between the state employer and the recognized employee organization, as defined in Section 3513.

(a) The department shall determine which classes or positions meet the elements of the criteria for the state safety category of membership in the Public Employees' Retirement System. An employee organization or employing agency requesting a determination from the department shall provide the department with information and written argument supporting the request.

(b) The department may use the determination findings in subsequent negotiations with the exclusive representatives.

(c) The department shall not approve safety membership for any class or position that has not been determined to meet all of the following criteria:

(1) In addition to the defined scope of duties assigned to the class or position, the member's ongoing responsibility includes:

(A) The protection and safeguarding of the public and of property.

(B) The control or supervision of, or a regular, substantial contact with one of the following:

(i) Inmates or youthful offenders in adult or youth correctional facilities.

(ii) Patients in state mental facilities that house Penal Code offenders.

(iii) Clients charged with a felony who are in a locked and controlled treatment facility of a developmental center.

(2) The conditions of employment require that the member be capable of responding to emergency situations and provide a level of service to the public such that the safety of the public and of property is not jeopardized.

(d) For classes or positions that are found to meet this criteria, the department may agree to provide safety membership by a memorandum of understanding reached pursuant to Section 3517.5 if the affected employees are subject to collective bargaining. The department shall notify the retirement system of its determination, as prescribed in Section 20405.1.

(e) The department shall provide the Legislature an annual report that lists the classes or positions which were found to be eligible for safety membership under this section.

SEC. 3. Section 19816.23 of the Government Code is repealed.

SEC. 4. Section 19818.8 of the Government Code is amended to read:

19818.8. (a) A person shall not be assigned to perform the duties of any class other than that to which his or her position is allocated, except as permitted by Section 19050.8.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 5. Section 19858.3 of the Government Code is amended to read:

19858.3. This article shall apply to all of the following:

(a) Employees who are excluded from the definition of "state employee" in subdivision (c) of Section 3513.

(b) Nonelected officers of the executive branch of government exempt from civil service designated by the department as eligible to receive managerial benefits.

(c) A State Traffic Sergeant in the California Highway Patrol.

(d) Commencing January 1, 1989, employees in a state bargaining unit for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to be subject to this article and has been approved by the Legislature pursuant to law.

SEC. 6. Section 19858.4 of the Government Code is amended to read:

19858.4. In lieu of the sick leave and vacation provisions of Sections 19858.1 and 19859, eligible employees, as defined by subdivisions (a), (b), and (c) of Section 19858.3, may elect to participate in an annual leave program. Each employee who has elected to participate in the annual leave program and who is employed full time shall receive credit for annual leave with pay in accordance with the following schedule:

1 month to 3 years	11 hours per month
37 months to 10 years	15 hours per month
121 months to 15 years	17 hours per month
181 months to 20 years	18 hours per month
241 months to 25 years	19 hours per month
301 months and over	20 hours per month

Part-time and hourly employees shall accrue proportional annual leave credits based on the schedule in this section. The time when annual leave shall be taken shall be determined by the appointing power of the officer or employee. Employees shall have use of any accrued sick leave they have accrued at the time they elect the annual leave program under the same conditions as other employees not participating in the program.

The department shall provide by rule for the regulation and accumulation of annual leave, the effect of an absence from the payroll of 10 work days or less in any calendar month upon credit for annual leave, methods by which employees leaving the employment of one state agency and entering the employment of another state agency may be compensated for, transfer, or otherwise receive proper credit for, their accumulated annual leave, and other provisions necessary for the administration of this section.

SEC. 7. Section 19858.5 of the Government Code is amended to read:

19858.5. In lieu of sick leave and vacation provisions of Sections 19858.1 and 19859, eligible employees, as defined by subdivision (d) of Section 19858.3, may participate in an annual leave program subject to the conditions of the appropriate memorandum of

understanding. Each employee who participates in the annual leave program and who is employed full time shall receive credit for annual leave with pay in accordance with the following schedule:

1 month to 3 years	11 hours per month
37 months to 10 years	14 hours per month
121 months to 15 years	16 hours per month
181 months to 20 years	17 hours per month
241 months and over	18 hours per month

Part-time and hourly employees shall accrue proportional annual leave credits based on the schedule in this section. The time when annual leave shall be taken shall be determined by the appointing power of the officer or employee. Employees shall have use of any accrued sick leave they have accrued at the time they elect the annual leave program under the same conditions as other employees not participating in the program.

The department shall provide by rule for the regulation and accumulation of annual leave, the effect of an absence from the payroll of 10 work days or less in any calendar month upon credit for annual leave, methods by which employees leaving the employment of one state agency and entering the employment of another state agency may be compensated for, transfer, or otherwise receive proper credit for, their accumulated annual leave, and other provisions necessary for the administration of this section.

SEC. 8. Section 19858.6 of the Government Code is repealed.

SEC. 9. Section 19863.1 of the Government Code is amended to read:

19863.1. (a) Notwithstanding any other provision of the law to the contrary, a state officer or employee who is entitled to temporary disability indemnity or vocational rehabilitation maintenance allowance under Division 4 (commencing with Section 3200) or Division 4.5 (commencing with Section 6100) of the Labor Code as a result of an industrial accident or injury shall earn sick leave and vacation leave or annual leave as though the employee was working. The state officer or employee who is receiving temporary disability or vocational rehabilitation maintenance allowance shall be permitted to supplement the payments with any form of leave credits. Supplementation of leave credits combined with vocational rehabilitation maintenance allowance shall not exceed the employee's full pay less mandatory withholdings.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the

expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 10. Section 20068.2 of the Government Code is repealed.

SEC. 11. Section 20400 of the Government Code is amended to read:

20400. (a) "State safety member" also includes members employed in the Department of Forestry and Fire Protection, whose principal duties consist of active fire suppression or supervision, including, but not limited to, members employed to perform duties now performed under the following titles: State Forester; all classes of State Forest Rangers; all classes of Deputy State Forester; all classes of fire prevention and law enforcement officers; all classes of Foresters; Fire Captain; all classes of Fire Crew Foreman; all classes of Forestry Trainees; all classes of forestry equipment and civil engineers; Forestry Superintendent, Conservation Camps; Fire Apparatus Engineer; Fireman, C.D.F.; Firefighter (Seasonal); Equipment Maintenance Foreman; Heavy Fire Equipment Operator. However, "state safety members" shall not include members employed in classes other than those set forth in this section whose principal duties are clerical or such as otherwise clearly do not fall within the scope of active fire suppression.

(b) Notwithstanding subdivision (a), "state safety member" shall not include civil engineers hired by the Department of Forestry and Fire Protection on or after January 1, 2000.

SEC. 12. Section 20405.1 of the Government Code is amended to read:

20405.1. Notwithstanding Section 20405, this section shall apply to state employees in state bargaining units that have agreed to these provisions in a memorandum of understanding between the state employer and the recognized employee organization, as defined in Section 3513.

(a) On and after the effective date of this section, state safety members shall also include officers and employees whose classifications or positions are found to meet the state safety criteria prescribed in Section 19816.20, provided the Department of Personnel Administration agrees to their inclusion. The effective date of safety membership shall be the date on which the department and the employees' exclusive representative reach agreement by memorandum of understanding pursuant to Section 3517.5.

(b) The department shall notify the board as new classes or positions become eligible for state safety membership, as specified in subdivision (a), and specify how service prior to the effective date shall be credited.

(c) Notwithstanding Section 7550.5, the department shall prepare and submit to the Legislature an annual report that contains the classes or positions that are eligible for state safety membership under this section.

(d) Any person designated as a state safety member pursuant to this section may elect, within 90 days of notification by the board, to remain subject to the miscellaneous or industrial service retirement benefit and contribution rate by filing an irrevocable election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21076 or Section 21353 only for service also included in the federal system.

SEC. 13. Section 20405.3 of the Government Code is repealed.

SEC. 14. Section 21547 of the Government Code is amended to read:

21547. (a) Notwithstanding any other provision of this article requiring attainment of the minimum age for voluntary service retirement to him or her in his or her last employment preceding death, upon the death of a state member on or after January 1, 1993, who is credited with 20 years or more of state service, the surviving spouse, or eligible children if there is no eligible spouse, may receive a monthly allowance in lieu of the basic death benefit. The board shall notify the eligible survivor, as defined in Section 21546, of this alternate death benefit. The board shall calculate the monthly allowance that shall be payable as follows:

(1) To the member's surviving spouse, an amount equal to the amount the member would have received if he or she had retired for service at minimum retirement age on the date of death and had election Option Settlement 2 and Section 21459.

(2) If there is no surviving spouse or the spouse dies before all of the children of the deceased member attain the age of 18 years, to the surviving children, under the age of 18 years, collectively, an amount equal to one-half of, and derived from the same source as, the unmodified allowance the member would have received if he or she had retired for service at minimum retirement age on the date of death. No child shall receive any allowance after marrying or attaining the age of 18 years. As used in this paragraph, "surviving children" includes a posthumously born child or children of the member.

(b) This section shall only apply to members employed in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section, members who are excluded from the definition of state employees in subdivision (c) of Section 3513, and members employed by the executive branch of government who are not members of the civil service.

(c) For purposes of this section, "state service" means service rendered as a state employee, as defined in Section 19815. This section shall not apply to any contracting agency nor to the employees of any contracting agency.

SEC. 15. Section 21547.5 is added to the Government Code, to read:

21547.5. For any survivor receiving a monthly allowance pursuant to Section 21547 prior to January 1, 2000, that allowance shall be adjusted as of January 1, 2000, to equal the amount that the survivor would have been entitled to receive if the member's death had occurred on or after January 1, 2000. The adjusted allowance shall be payable only on and after January 1, 2000.

SEC. 16. Section 22754 of the Government Code is amended to read:

22754. As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) "Board" means the Board of Administration of the Public Employees' Retirement System.

(b) "Employee" means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement System employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f)

of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) "Health benefits plan" means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) "Annuitant" means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21546, or 21547 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) "Family member" means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(g) "Contracting agency" means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds.

(h) "Employer" means the state, any contracting agency employing an employee, and any agency that has elected to become subject to this part pursuant to Section 22856.

(i) "Special district" means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 17. Section 22811.6 of the Government Code is repealed.

SEC. 18. Section 22955.55 is added to the Government Code, to read:

22955.55. (a) Notwithstanding the provisions of Sections 22953 and 22954, employees who become state members of the Public Employees' Retirement System after January 1, 2000, and who are included in the definition of state employee in subdivision (c) of Section 3513, and are members of a state bargaining unit that has agreed to this section, shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Sections 22953 and 22954, unless these employees are credited with 10 years of state service as defined by this section, at the time of retirement.

(b) Notwithstanding Sections 22953 and 22954, a state employee who became a state member of the Public Employees' Retirement System after January 1, 2000, and is either (1) excluded from the definition of state employee in subdivision (c) of Section 3513; or (2) a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Sections 22953 and 22954, unless the employee is credited with 10 years of state service as defined by this section, at the time of retirement.

(c) The percentage of employer's contribution amount payable for postretirement dental care benefits for an employee subject to this section shall be based on the funding provisions of the plan and the member's completed years of state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

(d) This section shall only apply to state employees who retire for service.

(e) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(f) For purposes of this section, "state service" shall mean service rendered as an employee or an appointed or elected officer of the state for compensation. In those cases where the state assumes or has assumed from a public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elected officers of that local public agency shall not be credited, at retirement, as state service for the purposes of this section, unless the former employer has paid or agreed to pay the state agency the amount actuarially determined to equal the cost for any employee dental benefits which were vested at the same time that the function and the related personnel were assumed by the state. For noncontracting local public agencies, the state department shall certify the completed years of local agency service to be credited to the employee to the Public Employees' Retirement System at the time of separation for retirement.

(g) Whenever the state contracts to assume a local public agency function, completed years of service rendered by the personnel for compensation as employees or appointed or elected officers of the local public agency shall be credited as state service only upon a finding by the Department of Finance that the contract contains a benefit factor sufficient to reimburse the state for the amount necessary to fully compensate the state for postretirement dental benefit costs for those personnel.

(h) This section shall not apply to employees of the California State University or the Legislature.

SEC. 19. Section 22957.5 of the Government Code is repealed.

SEC. 20. Section 10295 of the Public Contract Code is amended to read:

10295. All contracts entered into by any state agency for (a) the hiring or purchase of equipment, supplies, materials, or elementary school textbooks, (b) services, whether or not the services involve the furnishing or use of equipment, materials or supplies or are performed by an independent contractor, (c) the construction, alteration, improvement, repair or maintenance of property, real or personal, or (d) the performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department. Every such contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of the approval. This section applies to any state agency that by general or specific statute is expressly or impliedly authorized to enter into transactions referred to in this section. This section does not apply to any transaction entered into by the Trustees of the California State University or by a department

under the State Contract Act or the California State University Contract Law, any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code, any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources, any contract entered into by the Department of Personnel Administration for state employees in state bargaining units that have agreed to this section in a memorandum of understanding for employee benefits, occupational health and safety, training services, or combination thereof any contract let by the Legislature, or any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

SEC. 21. Section 10344.1 of the Public Contract Code is amended to read:

10344.1. The Department of Personnel Administration, with respect to contracts entered into by the department for state employees for employee benefits, occupational health and safety, training services, or any combination thereof, shall provide all qualified bidders with a fair opportunity to enter the bidding process, therefore stimulating competition in a manner conducive to sound fiscal practices. The Department of Personnel Administration shall make available to any member of the public its guidelines for awarding these contracts, and to the extent feasible, implement the objectives set forth in Section 10351.

SEC. 22. The provisions of the following memoranda of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and the following employee organizations in 1999, which require the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code:

(a) Unit - 2 - Association of California State Attorneys and Administrative Law Judges.

(b) Unit - 9 - Professional Engineers in California Government.

(c) Unit - 10 - California Association of Professional Scientists.

(d) Unit - 12 - International Union of Operating Engineers.

(e) Unit - 13 - International Union of Operating Engineers.

SEC. 23. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 24. Any provision in a memorandum of understanding approved by any section of this act that requires the expenditure of funds shall not take effect unless funds for these provisions are

appropriated by the Legislature. If funds for these provisions are not appropriated by the Legislature, all or any part of the memorandum of understanding may be declared null and void by any affected employee organization.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 1999–2000 fiscal year and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 458

An act to add Section 14035.55 to the Government Code, relating to transportation.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 14035.55 is added to the Government Code, to read:

14035.55. (a) The Legislature finds and declares all of the following:

(1) Intercity passenger bus service provided by intercity bus companies on a regular route basis is the only public mass transportation service in the state to provide surface transportation without public subsidy.

(2) The long-term maintenance of private sector intercity passenger service is of vital importance to the state.

(3) Intercity bus companies serve over 250 communities throughout California, providing a network of connection points without equal by any other mode of public or private transportation.

(b) To the extent permitted by federal law, the department shall encourage Amtrak and motor carriers of passengers to do both of the following:

(1) Combine or package their respective services and facilities to the public as a means of improving services to the public.

(2) Coordinate schedules, routes, rates, reservations, and ticketing to provide for enhanced intermodal surface transportation.

(c) Except as authorized under subdivision (e), the department may provide funding to Amtrak for the purpose of entering into a contract with a motor carrier of passengers for the intercity

transportation of passengers by motor carrier over regular routes only if all of the following conditions are met:

(1) The motor carrier is not a public recipient of governmental assistance, as defined in Section 13902(b)(8)(A) of Title 49 of the United States Code, other than a recipient of funds under Section 5311(f) of that title and code. This paragraph does not apply if a local public motor carrier proposes to serve passengers only within its service area.

(2) Service is provided only for passengers on trips where the passengers have had prior movement by rail or will have subsequent movement by rail, evidenced by a combination rail and bus one-way or roundtrip ticket.

(3) Vehicles of the motor carrier, when used to transport passengers pursuant to paragraph (2), are used exclusively for that purpose.

(4) The motor carrier is registered with the United States Department of Transportation (DOT) and operates in compliance with the federal motor carrier safety regulations, and provides service that is accessible to persons with disabilities in compliance with applicable DOT regulations pertaining to Amtrak services, in accordance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336).

(d) The department shall incorporate the conditions specified in subdivision (c) into state-supported passenger rail feeder bus service agreements between Amtrak and motor carriers of passengers. The bus service agreements shall also provide that a breach of those conditions shall be grounds for termination of the agreements.

(e) Notwithstanding subdivisions (c) and (d), the department may provide funding to Amtrak for the purpose of entering into a contract with a motor carrier of passengers to transport Amtrak passengers on buses operated on a route, if the buses are operated by the motor carrier as part of a regularly scheduled, daily bus service that has been operating consecutively without an Amtrak contract for 12 months immediately prior to contracting with Amtrak.

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

(1) "Amtrak" means the National Railroad Passenger Corporation.

(2) "Department" means the Department of Transportation or the department's successor with respect to providing funds to subsidize Amtrak service.

(3) "Motor carrier of passengers" means a person or entity providing motor vehicle transportation of passengers for compensation.

———

CHAPTER 459

An act to add Sections 2960.05, 3750.51, 4982.05, and 4992.31 to the Business and Professions Code, relating to counselors.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 2960.05 is added to the Business and Professions Code, to read:

2960.05. (a) Except as provided in subdivisions (b) and (c), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) shall be tolled until the minor reaches the age of majority.

SEC. 1.5. Section 3750.51 is added to the Business and Professions Code, to read:

3750.51. (a) Except as provided in subdivisions (b) and (c), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board

pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) shall be tolled until the minor reaches the age of majority.

SEC. 2. Section 4982.05 is added to the Business and Professions Code, to read:

4982.05. (a) Except as provided in subdivisions (b) and (c), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) shall be tolled until the minor reaches the age of majority.

SEC. 3. Section 4992.31 is added to the Business and Professions Code, to read:

4992.31. (a) Except as provided in subdivisions (b) and (c), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) shall be tolled until the minor reaches the age of majority.

SEC. 4. This act shall apply to all accusations filed on or after January 1, 2000.

CHAPTER 460

An act to amend Section 65091 of the Government Code, relating to accessibility standards.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 21, 1999.]

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

SECTION 1. Section 65091 of the Government Code is amended to read:

65091. (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways:

(1) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.

(2) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.

(3) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, the local agency may utilize records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.

(4) If the notice is mailed or delivered pursuant to paragraph (3), the notice shall also either be:

(A) Published pursuant to Section 6061 in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing.

(B) Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of the denial of, a drive-through facility permit.

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.

CHAPTER 461

An act to add Chapter 1.692 (commencing with Section 5096.300) to, and Chapter 1.693 (commencing with Section 5096.400) to, Division 5 of the Public Resources Code, relating to financing a program for the acquisition, development, improvement, rehabilitation, restoration, enhancement, and protection of park, recreational, cultural, historical, fish and wildlife, lake, riparian, reservoir, and coastal resources, by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1999. Filed with Secretary of State September 22, 1999.]

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

SECTION 1. Chapter 1.692 (commencing with Section 5096.300) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.692. SAFE NEIGHBORHOOD PARKS, CLEAN WATER, CLEAN AIR, AND COASTAL PROTECTION BOND ACT OF 2000

(THE VILLARAIGOSA-KEELEY ACT)

Article 1. General Provisions

5096.300. This chapter shall be known, and may be cited, as the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act).

5096.301. Responding to the recreational and open-space needs of a growing population and expanding urban communities, this act will revive state stewardship of natural resources by investing in neighborhood parks and state parks, clean water protection, and coastal beaches and scenic areas.

5096.302. The Legislature finds and declares all of the following:

(a) Historically, California's local and neighborhood parks often serve as the recreational, social, and cultural centers for cities and communities, providing venues for youth enrichment, senior activities, and family recreation.

(b) Neighborhood and state parks provide safe places to play in the urban neighborhoods, splendid scenic landscapes, exceptional experiences, and world-recognized recreational opportunities, and in so doing, are vital to California's quality of life and economy.

(c) For over a decade, the state's commitment to parks and natural resources has dwindled. California has not kept pace with the needed funding to adequately manage and maintain its multibillion dollar investment in neighborhood, urban, and state parks and natural areas resulting in disrepair and overcrowding of many park facilities and the degradation of wild lands.

(d) The magnificent Pacific Coast, outstanding mountain ranges, and unique scenic regions are the source of tremendous economic opportunity and contribute enormously to the quality of life of Californians.

(e) Continued economic success and enjoyment derived from California's natural resources depends on maintaining clean water, healthy ecosystems, and expanding public access for a growing state.

(f) The backlog of needs for repair and maintenance of local and urban parks exceeds two billion five hundred million dollars and the need for maintenance of state parks exceeds one billion dollars. The state's conservancies and wildlife agencies report a need for habitat acquisition and restoration exceeding $1.8 billion.

(g) This act will begin to address these critical neighborhood park and natural resources needs.

5096.303. The Legislature further finds and declares all of the following:

(a) Air pollution continues to be a major problem in California which harms the health of our residents, costs our economy billions

of dollars related to health care costs, reduced agricultural productivity, and damage to our infrastructure, and otherwise decreases the quality of life in our state.

(b) Forests and trees improve air quality by removing carbon dioxide, particulates, and other pollutants from the air, and by producing oxygen.

(c) Park, open-space, and tree planting projects also improve air quality and decrease congestion by reducing sprawl, improving the quality of life in areas that are already developed by helping local agencies implement sound land use plans that promote energy efficiency, and by providing incentives to reduce development in inappropriate areas.

5096.306. It is the intent of the Legislature to strongly encourage every state or local government agency receiving the bond funds allocated pursuant to this chapter for an activity to give full and proper consideration to the use of recycled and reusable products whenever possible with regard to carrying out that activity.

5096.307. (a) Every proposed activity to be funded pursuant to this chapter shall be in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(b) Lands acquired with funds allocated pursuant to this chapter shall be acquired from a willing seller of the land.

5096.3075. Upon a finding by the administering entity that a particular project for which funds have been allocated cannot be completed, or that the funds are in excess of the total needed, the Legislature may reallocate those funds for other high priority needs consistent with this act.

5096.308. As used in this chapter, the following terms have the following meanings:

(a) "Acquisition" means the acquisition from a willing seller of a fee interest or any other interest, including easements and development rights, in real property from a willing seller.

(b) "Board" means the Secretary of the Resources Agency designated in accordance with subdivision (b) of Section 5096.362.

(c) "Certified local community conservation corps programs" means programs operated by public or private nonprofit agencies pursuant to Section 14406.

(d) "Committee" means the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Finance Committee created pursuant to subdivision (a) of Section 5096.362.

(e) "District" means any regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3, any recreation and park district formed pursuant to Chapter 4 (commencing with Section 5780), or an authority formed pursuant to Division 26 (commencing with Section 35100). With respect to any

community or unincorporated region that is not included within a district, and in which no city or county provides parks or recreational areas or facilities, "district" also means any other district that is authorized by statute to operate and manage parks or recreational areas or facilities, employs a full-time park and recreation director, offers year-round park and recreation services on lands and facilities owned by the district, and allocates a substantial portion of its annual operating budget to parks or recreation areas or facilities

(f) "Fund" means the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Bond Fund created pursuant to Section 5096.310.

(g) "Historical resource" includes, but is not limited to, any building, structure, site area, place, artifact, or collection of artifacts that is historically or archaeologically significant in the cultural annals of California.

(h) "Program" means the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Program established pursuant to this chapter.

(i) "Secretary" means the Secretary of the Resources Agency.

(j) (1) "Stewardship" means the development and implementation of projects for the protection, preservation, rehabilitation, restoration, and improvement of natural systems and outstanding features of the state park system and historical and cultural resources. Those efforts may not include activities that merely supplement normal park operations or that are usually funded from other sources.

(2) (A) "Cultural resources stewardship" may include, but is not limited to, stabilization and protection of historical resources, including archaeological resources, in the state park system. Those resources may include sites, features, ruins, archaeological deposits, historical landscape resources, rock art features, and artifacts making up the physical legacy of California's past.

(B) "Cultural resources stewardship" does not include the rehabilitation, restoration, reconstruction, interpretation, or mitigation of historical resources typically required as part of a development program.

(3) "Natural resources stewardship" may include, but is not limited to, such objectives as the control of major erosion and geologic hazards, the restoration and improvement of critical plant and animal habitat, the control and elimination of exotic species encroachment, the stabilization of coastal dunes and bluffs, and the planning necessary to implement those objectives.

(k) "Wildlife conservation partnership" means a cooperative acquisition, restoration, or management of wildlife habitat for which the Wildlife Conservation Board provides matching funds to leverage other public, private, or nonprofit resources to maximize the conservation benefits to wildlife and wildlife habitat.

5096.309. Pursuant to guidelines issued by the secretary, all recipients of funding pursuant to this chapter shall post signs acknowledging the source of the funds.

Article 2. Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Program

5096.310. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Bond Fund, which is hereby created. Unless otherwise specified and except as provided in subdivision (m), the money in the fund shall be available for appropriation by the Legislature, in the manner set forth in this chapter, only for parks and resources improvement and administrative costs allocable to the bond funded projects, in accordance with the following schedule:

(a) The sum of five hundred two million seven hundred fifty thousand dollars ($502,750,000) to the department for the following purposes:

(1) To rehabilitate, restore, and improve units of the state park system that will ensure that state park system lands and facilities will remain open and accessible for public use.

(2) To develop, improve, rehabilitate, restore, enhance, and protect facilities and trails at existing units of the state park system that will provide for optimal recreational and educational use, activities, improved access and safety, and the acquisition from a willing seller of inholdings and adjacent lands. Adjacent lands are lands contiguous to, or in the immediate vicinity of, existing state park system lands and that directly benefit an existing state park system unit.

(3) For stewardship of the public investment in the preservation of the critical natural heritage and scenic features, and cultural heritage stewardship projects that will preserve vanishing remnants of California's landscape, and protect and promote a greater understanding of California's past, and the planning necessary to implement those efforts.

(4) For facilities and improvements to enhance volunteer participation in the state park system.

(5) To develop, improve, and expand interpretive facilities at units of the state park system, including educational exhibits and visitor orientation centers.

(6) To rehabilitate and repair aging facilities at winter recreation facilities pursuant to the Sno-Park program, as provided for in Chapter 1.27 (commencing with Section 5091.01), that provide for improved public safety.

(7) For projects that improve air quality related to the state park system, including, but not limited to, the purchase of low-emission or advanced technology vehicles and equipment and clean fuel

distribution facilities that will avoid or reduce air emissions at state park facilities.

(b) The sum of eighteen million dollars ($18,000,000) to the department to undertake stewardship projects, including cultural resources stewardship and natural resources stewardship projects, that will restore and protect the natural treasures of the state park system, preserve vanishing remnants of California's landscape, and protect and promote a greater understanding of California's past.

(c) The sum of four million dollars ($4,000,000) to the department for facilities and improvements to enhance volunteer participation in the state park system.

(d) The sum of twenty million dollars ($20,000,000) to the department for grants to local agencies administering units of the state park system under an operating agreement with the department, for the development, improvement, rehabilitation, restoration, enhancement, protection, and interpretation of lands and facilities of, and improved access to, those locally operated units.

(e) The sum of ten million dollars ($10,000,000) to the California Heritage Fund, created pursuant to Section 5079.10, for competitive grants, in accordance with Section 5096.335.

(f) The sum of three hundred eighty-eight million dollars ($388,000,000) to the department for grants, in accordance with Sections 5096.332, 5096.333, and 5096.336, on the basis of population, for the acquisition, development, improvement, rehabilitation, restoration, enhancement, and interpretation of local park and recreational lands and facilities, including renovation of recreational facilities conveyed to local agencies resulting from the downsizing or decommissioning of federal military installations.

(g) The sum of two hundred million dollars ($200,000,000) to the department for grants to cities, counties, and districts for the acquisition, development, rehabilitation, and restoration of park and recreation areas and facilities pursuant to the Roberti-Z'berg-Harris Urban Open-Space and Recreational Program Act (Chapter 3.2 (commencing with Section 5620)).

(h) The sum of ten million dollars ($10,000,000) to the department for grants, in accordance with Section 5096.337, for the improvement or acquisition and restoration of riparian habitat, riverine aquatic habitat, and other lands in close proximity to rivers and streams for river and stream trail projects undertaken in accordance with Section 78682.2 of the Water Code, and for purposes of Section 7048 of the Water Code.

(i) The sum of ten million dollars ($10,000,000) to the department for grants, in accordance with Section 5096.337, for the development, improvement, rehabilitation, restoration, enhancement, and interpretation of nonmotorized trails for the purpose of increasing public access to, and enjoyment of, public areas for increased recreational opportunities. Not less than two million five hundred thousand dollars ($2,500,000) of this amount shall be allocated toward

the completion of projects that link existing bicycle and pedestrian trail systems to major urban public transportation systems, to promote increased recreational opportunities and nonmotorized commuter usage. Of this amount, no less than two hundred seventy-five thousand dollars ($275,000) shall be allocated to the East Bay Regional Park District toward the completion of the Iron Horse Trail.

(j) The sum of one hundred million dollars ($100,000,000) to the department for grants to public agencies and nonprofit organizations for park, youth center, and environmental enhancement projects and programs that benefit youth in areas that lack safe neighborhood parks, open space, and natural areas, and that have significant poverty.

(k) The sum of two million five hundred thousand dollars ($2,500,000) to the California Conservation Corps to complete capital outlay and resource conservation projects and administrative costs allocable to the bond funded projects.

(*l*) The sum of eighty-six million five hundred thousand dollars ($86,500,000) to the department for the following purposes:

(1) The sum of seventy-one million five hundred thousand dollars ($71,500,000) for grants, in accordance with Sections 5096.339 and 5096.340, for urban recreational and cultural centers, including, but not limited to, zoos, museums, aquariums, and facilities for wildlife, environmental, or natural science aquatic education or projects that combine curation of archaeological, paleontological, and historic resources with education and basic and applied research, and that emphasize specimens of California's extinct prehistoric plants and animals.

(2) The sum of fifteen million dollars ($15,000,000) for grants for regional youth soccer and baseball facilities operated by nonprofit organizations. Priority shall be given to those grant projects that utilize existing school facilities or recreation facilities and serve disadvantaged youth.

(m) Notwithstanding Section 13340 of the Government Code, the sum of two hundred sixty-five million five hundred thousand dollars ($265,500,000) is hereby continuously appropriated to the Wildlife Conservation Board, without regard to fiscal years, in accordance with Section 5096.350.

(n) The sum of fifty million dollars ($50,000,000) to the California Tahoe Conservancy, in accordance with Section 5096.351.

(o) The sum of two hundred twenty million four hundred thousand dollars ($220,400,000) to the State Coastal Conservancy, in accordance with Section 5096.352.

(p) The sum of thirty-five million dollars ($35,000,000) to the Santa Monica Mountains Conservancy, in accordance with Section 5096.353.

(q) The sum of five million dollars ($5,000,000) to the Coachella Valley Mountains Conservancy, in accordance with Section 5096.354.

(r) The sum of fifteen million dollars ($15,000,000) to the San Joaquin River Conservancy, in accordance with Section 5096.355.

(s) The sum of twelve million five hundred thousand dollars ($12,500,000) to the California Conservation Corps for grants for the certified local community conservation corps program to complete capital outlay and resource conservation projects.

(t) The sum of twenty-five million dollars ($25,000,000) to the Department of Conservation in accordance with Section 5096.356.

(u) The sum of ten million dollars ($10,000,000) to the Department of Forestry and Fire Protection for urban forestry programs in accordance with Section 4799.12. The grants made pursuant to this subdivision shall be for costs associated with the purchase and planting of trees, and up to three years of care which ensures the long-term viability of those trees.

(v) The sum of twelve million dollars ($12,000,000) to the Department of Fish and Game for the following purposes:

(1) The sum of five million dollars ($5,000,000) for expenditure in accordance with subdivision (a) of Section 5096.357.

(2) The sum of five million dollars ($5,000,000) for expenditure in accordance with subdivision (b) of Section 5096.357.

(3) The sum of two million dollars ($2,000,000) to remove nonnative vegetation harmful to ecological reserves.

(w) The sum of thirty million dollars ($30,000,000) shall be available for purposes of Chapter 4.5 (commencing with Section 31160) of Division 21. Two hundred fifty thousand dollars ($250,000) shall be allocated to a nonprofit organization dedicated to protecting, preserving, and saving Mount Diablo.

(x) (1) The sum of seven million dollars ($7,000,000) to the California Integrated Waste Management Board for grants to local agencies to assist them in meeting state and federal accessibility standards relating to public playgrounds if the local agency guarantees that 50 percent of the grant funds will be used for the improvement or replacement of playground equipment or facilities through the use of recycled materials and that matching funds in an amount equal to not less than 50 percent of the total amount of those grant funds will be provided through either public or private funds or in-kind contributions. The board may reduce this matching fund requirement to not less than 25 percent if it determines that the 50 percent requirement would impose an extreme financial hardship on the local agency applying for the grant.

(2) The funds allocated pursuant to paragraph (1) shall be deposited into the Playground Safety and Recycling Account established pursuant to Section 115815 of the Health and Safety Code if Assembly Bill 1055 of the 1999–2000 Regular Session, which would add that section, is enacted and becomes operative on or before January 1, 2000. If Assembly Bill 1055 of the 1999–2000 Regular Session is not enacted and does not become operative on or before January

1, 2000, the Playground Safety and Recycling Account is hereby created for the deposit of funds allocated pursuant to paragraph (1).

(3) The funds deposited into the account pursuant to this subdivision may be expended by the board, upon appropriation by the Legislature, for the purposes specified in paragraph (1).

(y) The sum of fifteen million dollars ($15,000,000) to a city for rehabilitation, restoration, or enhancement to a city park that is over 1,000 acres that serves an urban area of over 750,000 population in northern California and that provides recreational, cultural, and scientific resources.

(z) (1) The sum of six million two hundred fifty thousand dollars ($6,250,000) to the secretary to administer grants to the Sierra Nevada-Cascade Program, in accordance with Section 5096.347.

(2) The sum of thirty-three million five hundred thousand dollars ($33,500,000) to the secretary to administer a river parkway and restoration program to assist local agencies and other districts to plan, create, and conserve river parkways. The secretary shall make funds available in accordance with Sections 7048 and 78682.2 of the Water Code, and any other applicable authority, for the following purposes:

(A) Twenty-five million dollars ($25,000,000) for the acquisition or restoration of public lands within the Los Angeles River Watershed, the San Gabriel River Watershed, and the San Gabriel Mountains and to provide open space, nonmotorized trails, bike paths, and other low-impact recreational uses and wildlife and habitat restoration and protection. Ten million dollars ($10,000,000) shall be allocated for the Los Angeles River Watershed, and fifteen million dollars ($15,000,000) shall be allocated for the San Gabriel River Watershed and the San Gabriel Mountains and lower Los Angeles River.

(B) Two million five hundred thousand dollars ($2,500,000) for river parkway projects along the Kern River between the mouth of the Kern Canyon and I-5.

(C) One million dollars ($1,000,000) for land acquisition in the Santa Clarita Watershed.

(D) Three million dollars ($3,000,000) for watershed, riparian, and wetlands restoration along the Sacramento River in Yolo, Glenn, and Colusa Counties.

(E) Two million dollars ($2,000,000) for the construction of a visitor center at a state recreation area encompassing a body of water along the American River.

(3) The sum of two million dollars ($2,000,000) to the secretary for resource conservation and urban water recycling, multicounty regional recreational needs habitat restoration, and joint sponsorship by multiple local agencies and nonprofit organizations in the County of Sonoma.

(4) The sum of one million one hundred thousand dollars ($1,100,000) to the secretary, two hundred thousand dollars ($200,000) of which shall be made available to fund a community center and a veterans park in San Benito County, five hundred

thousand dollars ($500,000) of which shall be made available to fund a community center in the City of Galt, and four hundred thousand dollars ($400,000) of which shall be made available to fund a community center in the City of Gilroy.

(5) Two million dollars ($2,000,000) for Camp Arroyo in Alameda County.

(6) The sum of one million dollars ($1,000,000) to construct a rehabilitation center for injured endangered and indigenous wild animals in the San Bernardino Mountains.

Article 3. State Park System Program

5096.320. The Legislature hereby recognizes that public financial resources are inadequate to meet all capital outlay needs of the state park system and that the need for the acquisition, development, restoration, rehabilitation, improvement, and protection of state park system lands and facilities has increased to the point that their continued well-being and the realization of their full public benefit is in jeopardy.

(a) The department shall annually submit to the Legislature and to the secretary a report, consisting of a prioritized listing and comparative evaluation of needs.

(b) Projects approved by the secretary shall be forwarded by the secretary to the Director of Finance for inclusion in the Budget Bill.

5096.322. (a) No later than November 1, 2001, the director shall determine the amount of funding that is necessary to complete all deferred maintenance projects within each unit of the state park system.

(b) Except as provided in subdivision (c), no proceeds of the bonds issued and sold pursuant to this chapter may be used to acquire improved property for a unit of the state park system until 75 percent of the amount determined pursuant to subdivision (a) has been appropriated, and allocated to complete deferred maintenance projects within that unit from an appropriated funding source other than the proceeds of the bonds issued and sold pursuant to this chapter.

(c) Real property may be acquired under this chapter for a unit of the state park system that does not meet the requirements of subdivision (b) only if the director finds, with respect to that unit, that a unique opportunity is presented to acquire real property that will constitute a significant improvement of the state park system.

(d) As used in this section, "deferred maintenance project" means any project identified in the department's 2001 Deferred Maintenance Assessment that rehabilitates or repairs a facility to a safe and usable condition for the visiting public.

5096.323. Fifty million dollars ($50,000,000) of the funds allocated pursuant to subdivision (a) of Section 5096.310 shall be expended for the acquisition of land from willing sellers that are a high priority for

both the state parks system and for habitat purposes, with priority given to projects that protect habitat for rare, threatened, or endangered species pursuant to a natural community conservation plan adopted pursuant to Chapter 10 (commencing with Section 2800) of Division 10 of the Fish and Game Code, if the acquisition of the land is conducted in conjunction with a natural community conservation plan approved by the Department of Fish and Game prior to January 1, 1999, or if the acquisition is approved by statute. Notwithstanding paragraph (2) of subdivision (a) of Section 5096.310, those land acquisitions may be for either new or existing units of the state park system.

5096.324. (a) Funds appropriated to the department pursuant to subdivision (a) of Section 5096.310 shall be made available for the following purposes:

(1) The sum of fifteen million dollars ($15,000,000) to preserve and restore a unit of the state parks system that preserves and restores cultural and historical immigration resources in northern California.

(2) The sum of two million six hundred thousand dollars ($2,600,000) to construct visitor centers in state parks, state recreation areas, and state historic parks. The department shall give priority to projects at Chino Hills State Park and California Citrus State Historic Park.

(3) Up to six hundred fifty thousand dollars ($650,000) for playground equipment upgrades in state recreation areas.

(4) The sum of two hundred fifty thousand dollars ($250,000) for restoration of state reserves that maintain the state flower.

(5) The sum of one million dollars ($1,000,000) for restoration of state beaches.

(6) The sum of five million dollars ($5,000,000) for restoration, study, and curation of paleontological, archaeological, and historical resource site protection. Priority shall be given to projects that combine curation of archaeological, paleontological, and historical resources with education and basic and applied research, and that emphasize specimens of California's extinct prehistoric plants and animals.

(7) The sum of two million seven hundred fifty thousand dollars ($2,750,000) for restoration of historic rail sites and capital outlay projects for state approved underground mine tour sites.

(8) The sum of ten million dollars ($10,000,000) for the acquisition of lands from willing sellers of lands that are forested with redwoods or that will enhance the protection or preservation of the redwood forest ecosystem. The department shall give preference to projects where matching contributions in funding from other public agencies, private parties, or nonprofit organizations are available.

(9) Up to five hundred thousand dollars ($500,000) to construct trails, trailheads, and parking, and to provide nonvehicular public

access between the Bear and Mendoza Ranch open-space and adjacent Henry Coe State Park.

Article 4. Grant Program

5096.331. The Legislature hereby recognizes that public financial resources are inadequate to meet all of the funding needs of local public park and recreation providers and that there is an urgent need for safe, open, and accessible local park and recreational facilities and for the increased recreational opportunities that provide positive alternatives to social problems. Accordingly, it is declared to be the policy of this state that the funds allocated pursuant to subdivisions (f) and (g) of Section 5096.310 to local agencies shall be appropriated primarily for projects that accomplish all of the following:

(a) Rehabilitate facilities at existing local parks that will provide for more efficient management and reduced operational costs. This may include grants to local agencies for the renovation of recreational facilities conveyed to local agencies resulting from the downsizing and decommissioning of federal military installations.

(b) Develop facilities that promote positive alternatives for youth and that promote cooperation between local park and recreation service providers and youth-serving nonprofit organizations.

(c) Promote family oriented recreation, including art activities.

(d) Provide for open, safe, and accessible local park lands, facilities, and botanical gardens.

5096.332. (a) Sixty percent of the total funds available for grants pursuant to subdivision (f) of Section 5096.310 shall be allocated to cities and to districts other than a regional park district, regional park and open-space district, or regional open-space district. Each city's and district's allocation shall be in the same ratio as the city's or district's population is to the combined total of the state's population that is included in incorporated areas and unincorporated areas within the district, except that each city or district shall be entitled to a minimum allocation of thirty thousand dollars ($30,000). In any instance in which the boundary of a city overlaps the boundary of such a district, the population in the area of overlapping jurisdictions shall be attributed to each jurisdiction in proportion to the extent to which each operates and manages parks and recreational areas and facilities for that population. In any instance in which the boundary of a city overlaps the boundary of such a district, and in the area of overlap the city does not operate and manage parks and recreational areas and facilities, all grant funds shall be allocated to the district.

(b) Each city and each district subject to subdivision (a) whose boundaries overlap shall develop a specific plan for allocating the grant funds in accordance with the formula specified in subdivision (a). If, by April 1, 2001, the plan has not been agreed to by the city and district and submitted to the department, the director shall

determine the allocation of the grant funds among the affected jurisdictions.

5096.333. (a) Forty percent of the total funds available for grants pursuant to subdivision (f) of Section 5096.310 shall be allocated to counties and regional park districts, regional park and open-space districts, or regional open-space districts formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3.

(b) Each county's allocation under subdivision (a) shall be in the same ratio as the county's population, except that each county shall be entitled to a minimum allocation of one hundred fifty thousand dollars ($150,000).

(c) In any county that embraces all or part of the territory of a regional park district, regional park and open-space district, or regional open-space district, whose board of directors is not the county board of supervisors, the amount allocated to the county shall be apportioned between that district and the county in proportion to the population of the county that is included within the territory of the district and the population of the county that is outside the territory of the district.

(d) In any county that currently embraces all or a part of the territory of a regional open-space district and an authority formed pursuant to Division 26 (commencing with Section 35100), the allocation shall be distributed between the county and these entities as follows:

(1) First, the funds shall be apportioned between the district and the county in proportion to the population of the county that is included within the territory of the district, and the proportion of the population of the county that is outside the district. The amounts resulting from this calculation shall be known as the district's share, and the county's first balance. The district's share shall be allocated to the district. The county's first balance shall be further apportioned as provided in paragraph (2).

(2) The county's first balance, as determined in accordance with paragraph (1), shall be further apportioned between the authority and the county in proportion to the population of the county that is included within the territory of the authority, and the proportion of the population of the county that is outside the authority. The amounts resulting from this calculation shall be known as the authority's share, and the county's second balance.

(3) The authority's share shall be divided equally between the county and the authority. The county shall receive all of the county's second balance.

5096.334. Notwithstanding Section 5096.331, of the funds allocated on the basis of population pursuant to subdivision (f) of Section 5096.310 within counties with a population of five million persons or more, not less than 75 percent of the total amount shall be available as follows:

(a) Not less than 20 percent for land acquisition, construction, development, and rehabilitation of at-risk youth recreation facilities. As used in this section, "at-risk youth" means persons who have not attained the age of 21 years and are at high risk of being involved in, or are involved in, one or more of the following: gangs, juvenile delinquency, criminal activity, substance abuse, adolescent pregnancy, or school failure or dropout.

(b) Not less than 40 percent for projects within the most economically disadvantaged areas, which may include projects along river parkways, conservation corridors, and parkways along corridors of economic significance.

(c) Not less than 10 percent for urban reforestation projects.

(d) Not more than 5 percent for projects that convert publicly owned land to a neighborhood park providing open-space, recreational, cultural, and festival opportunities, if the bond proceeds do not exceed 25 percent of the total project cost and there is a 75 percent funding match.

5096.335. Funds authorized pursuant to subdivision (e) of Section 5096.310 shall be administered by the State Office of Historic Preservation and shall be available as grants, on a competitive basis, to cities, counties, districts, local agencies formed for park purposes pursuant to a joint powers agreement between two or more local entities, and nonprofit organizations for the acquisition, development, rehabilitation, restoration, and interpretation of historical resources.

5096.336. (a) Of the funds authorized pursuant to subdivision (f) of Section 5096.310, three hundred thirty-eight million dollars ($338,000,000) shall be available for grants to cities, counties, and districts on the basis of their populations, as determined by the department in cooperation with the Department of Finance, on the basis of the most recent verifiable census data and other population data that the department may require to be furnished by the applicant city, county, or district.

(b) Of the funds authorized pursuant to subdivision (f) of Section 5096.310, fifty million dollars ($50,000,000) available for grants pursuant to subdivision (f) of Section 5096.310 shall be allocated to cities and districts in urbanized counties providing park and recreation services within jurisdictions of 200,000 or less in population. For purposes of this subdivision, "urbanized counties" means a county with a population of 200,000 or greater.

5096.337. (a) Funds authorized pursuant to subdivisions (h), (i), and (z) of Section 5096.310 shall be available as grants, on a competitive basis, to cities, counties, districts, local agencies formed for park purposes pursuant to a joint powers agreement as defined in subdivision (b), and other districts, as defined in subdivision (c).

(b) For purposes of this section, "local agency" means any local agency formed for park purposes pursuant to a joint powers agreement between two or more local entities.

(c) For purposes of this section, "other districts" include any district authorized to provide park, recreational, or open-space services, or a combination of those services, except a school district.

5096.338. The funds allocated pursuant to subdivision (j) of Section 5096.310 shall, upon appropriation in the annual Budget Act, be available for existing or new entities or programs designated by statute for grants to public agencies and nonprofit organizations, and for related administrative costs. At least 50 percent of the funds shall be available for grants to local public agencies and districts.

5096.339. Not less than 11 percent of the funds authorized in paragraph (1) of subdivision (*l*) of Section 5096.310 shall be available as grants administered by the department to cities, counties, and nonprofit organizations for the development, rehabilitation, or restoration of facilities accredited by the American Zoo and Aquarium Association (AZA) and operated by cities, counties, and nonprofit organizations, and to cities, counties, and nonprofit organizations for the development, rehabilitation, or restoration of zoos and aquariums operated by cities, counties, and nonprofit organizations, but not yet accredited by the AZA. This program shall be known, and may be cited, as the Dr. Paul Chaffee Zoological Program. Allocation in awarding grants pursuant to this section shall be in accordance with the following schedule:

(a) Individual grants of up to one million dollars ($1,000,000), or an amount to be determined by dividing 95 percent of the total zoo and aquarium funds available pursuant to this section by the number of AZA accredited institutions at the time of enactment of this section, shall be made available to zoos and aquariums that are AZA accredited.

(b) Not less than 20 percent or two million dollars ($2,000,000), whichever is greater, of the funds available pursuant to subdivision (a) shall be reserved for institutions with annual operating budgets of less than one million dollars ($1,000,000).

(c) Not more than 5 percent of the total funds available pursuant to this section, shall be made available as grants to zoos and aquariums that have initiated the AZA accreditation process but are not yet accredited at the time of the enactment of this section. Grants awarded under this subdivision shall be dedicated to projects which will enhance the institution's ability to meet standards of AZA accreditation.

(d) Not more than 5 percent of the total funds available pursuant to this section shall be granted for publicly owned or nonprofit zoos and wildlife centers that may not be accredited, but that care for animals that have been injured or abandoned and that cannot be returned to the wild. To be eligible for this portion of those funds, applicants shall demonstrate that they serve a regional area, foster the environmental relationships of animals within that region, and operate outreach and onsite programs communicating those objectives to the public.

(e) At least ten million dollars ($10,000,000) shall be provided to the California Science Center for implementation of the Exposition Master Plan. Three million dollars ($3,000,000) of this amount shall be made available to the California African-American Museum for completion of its education and visitor facility in Exposition Park and seven million dollars ($7,000,000) of this amount shall be made available for the California Science Centers' environmental science facility.

(f) Not less than five hundred thousand dollars ($500,000) of the funds allocated pursuant to this section shall be available as grants for facilities for education programs focused on the National Marine Sanctuaries along California's coast.

(g) Not less than forty-four million seven hundred fifty thousand dollars ($44,750,000) of the funds allocated pursuant to this section shall be made available for the following purposes:

(1) At least ten million dollars ($10,000,000) shall be provided to the Discovery Science Center in Santa Ana for capital improvement projects, if there is a local match in private funds.

(2) At least ten million dollars ($10,000,000) shall be provided to the California Academy of the Sciences for capital improvement projects, if there is a local match in private funds.

(3) At least two million dollars ($2,000,000) shall be provided toward the creation of the Delta Science Center to carry out significant marine and delta aquatic education and interpretive programs, if there is a local match in private funds.

(4) At least fifteen million dollars ($15,000,000) shall be provided to the Alliance of Redding Museums for capital improvements for the Turtle Bay-Museums and the Arboretum on the River, if there is a local match in private funds.

(5) An individual grant of four million two hundred fifty thousand dollars ($4,250,000) shall be made to the California Division of Fairs and Expositions of the Department of Food and Agriculture for capital outlay to assist with an approved contract entered into on or before January 1, 2000, for an exposition or state fair relocation in any county with a population greater than 5,000,000.

(6) The sum of three million five hundred thousand dollars ($3,500,000) to enhance the two-acre historical exhibit at the Kern County Museum.

5096.340. (a) Not less than 11 percent of the funds authorized in paragraph (1) of subdivision (*l*) of Section 5096.310 shall be available as grants on a competitive basis to cities, counties, and nonprofit organizations for the development or rehabilitation of real property consisting of urban recreational and cultural centers, museums, and facilities for wildlife education or environmental education.

(b) To be eligible for funding, a project shall initially be nominated by a Member of the Legislature for study by the department. The department shall study each project so nominated and, prior to the April 1 preceding the fiscal year in which funds are

proposed to be appropriated, shall submit to the Legislature a prioritized listing and comparative evaluation of all projects nominated prior to the preceding July 1.

(c) In establishing priorities of projects, the department shall consider any favorable project characteristics, including, but not limited to, all of the following:

(1) The project will interpret one or more important California historical, cultural, economic, or resource themes or an important historical, cultural, economic, technological, or resource theme in a major region of California. Higher priority shall be assigned to projects whose themes are not interpreted in any existing museum or have demonstrable deficiencies in their presentation in an existing museum.

(2) The project is proposed to be operated on lands that are already in public ownership or on lands that will be acquired and used for the project in conjunction with adjoining public lands.

(3) Projects that are closely related geographically to the resources, activity, structure, place, or collection of objects to be interpreted, and are close to population centers and access routes.

(4) Projects that are in, or close to, population centers or are adjacent to, or readily served by, a state highway or other mode of public transportation.

(5) Projects for which there are commitments, or the serious likelihood of commitments, of funds or the donation of land or other property suitable for the project.

(d) The department shall annually forward a list of the highest priority projects to the Department of Finance for inclusion in the Budget Bill.

(e) An application for a grant for a cooperative museum project shall be submitted jointly by the city, county, or other public agency, an institute of higher learning, or a nonprofit organization that cooperatively is operating, or will operate, the project.

5096.341. (a) The director shall prepare and adopt criteria and procedures for evaluating applications for grants allocated pursuant to subdivisions (f), (g), (h), (i), and (*l*) of Section 5096.310. Individual applications for funds shall be submitted to the department for approval as to their conformity with the requirements of this chapter. The application shall be accompanied by certification from the planning agency of the applicant that the project for which the grant is requested is consistent with the park and recreation element of the applicable city or county general plan or the district park and recreation plan, as the case may be, and will satisfy a high priority need. To utilize available grant funds as effectively as possible, overlapping or adjoining jurisdictions are encouraged to combine projects and submit a joint application.

(b) Any applicant may allocate all or a portion of its per capita share for a regional or state project.

(c) The director shall annually forward a statement of the total amount to be appropriated in each fiscal year for projects approved for grants pursuant to subdivisions (f), (g), (h), (i), and (*l*) of Section 5096.310 to the Director of Finance for inclusion in the Budget Bill. A list of eligible jurisdictions and the amount of grant funds to be allocated to each shall also be made available by the department.

(d) (1) Funds appropriated for grants pursuant to subdivisions (f), (g), (h), (i), and (*l*) of Section 5096.310 shall be encumbered by the recipient within three years from the date that the appropriation became effective. Regardless of the date of encumbrance of the granted funds, the recipient is expected to complete all funded projects within eight years of the effective date of the appropriation.

(2) Commencing with the Budget Bill for the 2009–10 fiscal year, any grant funds appropriated pursuant to subdivisions (f), (g), (h), (i), and (*l*) of Section 5096.310 that have not been expended by the grantee shall revert to the fund and be available for appropriation by the Legislature for one or more of the categories specified in Section 5096.310 that the Legislature determines to be of the highest priority statewide.

5096.342. (a) Grant funds appropriated pursuant to subdivisions (f), (g), (h), (i), and (*l*) of Section 5096.310 may be expended by the grantee only for projects on lands owned by, or subject to a lease or other interest held by, the grantee.

(b) If a grant applicant does not have fee title to the lands, the applicant shall demonstrate to the satisfaction of the department that the proposed project will provide public benefits that are commensurate with the type and duration of the interest in land that is held by the applicant.

5096.343. (a) Except as provided in subdivision (c), no grant funds authorized pursuant to subdivisions (f), (g), (h), (i), and (*l*) of Section 5096.310 may be disbursed unless the applicant has agreed, in writing, to both of the following:

(1) To maintain and operate the property funded pursuant to this chapter for a period that is commensurate with the type of project and the proportion of state funds and local matching funds or property allocated to the capital costs of the project. With the approval of the department, the grantee, or the grantee's successor in interest in the property, may transfer the responsibility to maintain and operate the property in accordance with this section.

(2) To use the property only for the purposes for which the grant was made and to make no other use or sale or other disposition of the property, except as authorized by specific act of the Legislature.

(b) The agreements specified in subdivision (a) shall not prevent the transfer of the property from the applicant to a public agency, if the successor public agency assumes the obligations imposed by those agreements.

(c) If the use of the property is changed to a use that is not permitted by the category from which the grant funds were

appropriated, or if the property is sold or otherwise disposed of, an amount equal to (1) the amount of the grant, (2) the fair market value of the real property, or (3) the proceeds from the sale or other disposition, whichever is greater, shall be used by the grantee for a purpose authorized by that category, pursuant to agreement with the department as specified in subdivision (a), or shall be reimbursed to the fund and be available for appropriation by the Legislature only for a purpose authorized by that category. If the property sold or otherwise disposed of is less than the entire interest in the property funded with the grant, an amount equal to either the proceeds from the sale or other disposition of the interest or the fair market value of the interest sold or otherwise disposed of, whichever is greater, shall be used by the grantee for a purpose authorized by the category from which the funds were appropriated, pursuant to agreement with the department as specified in subdivision (a), or shall be reimbursed to the fund and be available for appropriation by the Legislature only for a use authorized by that category.

5096.344. All grants, gifts, devises, or bequests to the state, that are conditioned upon being used for park, conservation, recreational, agricultural, or other such purposes, may be accepted and received on behalf of the state by the appropriate departmental director, with the approval of the Director of Finance, and those grants, gifts, devises, or bequests shall be available, upon appropriation by the Legislature, for expenditure for the purposes specified in Section 5096.310.

5096.345. Except for funds continuously appropriated by this chapter, all appropriations of funds pursuant to Section 5096.310 for purposes of the program shall be included in a section of the Budget Bill for the 2001–02 fiscal year, and each succeeding fiscal year, for consideration by the Legislature, and shall bear the caption "Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Program." The section shall contain separate items for each project, each class of project, or each element of the program for which an appropriation is made.

Article 4.5. Clean Air Improvement Program

5096.346. (a) In allocating funds pursuant to subdivision (u) of Section 5096.310, the Department of Forestry and Fire Protection shall give preference to the planting of trees that provide greater air quality benefits and to urban forestry projects that provide greater energy conservation benefits.

(b) The Department of Forestry and Fire Protection shall consult with the State Air Resources Board in developing guidelines for the allocation of grant funds pursuant to subdivision (u) of Section 5096.310 that promote air quality benefits.

(c) State and local agencies shall consider potential air quality benefits when allocating funds received pursuant to this chapter.

Article 4.6. Sierra Nevada-Cascade Mountain Region

5096.347. (a) The Legislature hereby finds and declares that the Sierra Nevada and Cascade Mountain Region constitutes a unique and important environmental, anthropological, cultural, scientific, educational, recreational, scenic, water, watershed, and wildlife resource that should be held in trust for the enjoyment of, and appreciated by, present and future generations.

(b) The secretary shall administer grants to the Sierra Nevada-Cascade Program to assist local governments, agencies, districts, and nonprofit organizations working in collaboration with those local governments, agencies, and districts to plan, create, and conserve the Sierra-Cascade natural ecosystem. The secretary shall make funds available on a competitive basis for all of the following activities:

(1) The acquisition and restoration of riparian habitat in accordance with Sections 7048 and 78682.2 of the Water Code to improve water quality, and to protect, restore, or rehabilitate watersheds, streams wetlands, or other aquatic habitat.

(2) Capital improvement projects that provide park and recreational opportunities.

(3) Access to trails and public lands, in accordance with Article 6 (commencing with Section 5070) of Chapter 1 of Division 5.

(4) Acquisition of park lands or recreational facilities.

(c) The secretary shall give priority to fund up to two million dollars ($2,000,000) for public beach improvements on properties owned or administered by local agencies in the Lake Tahoe area, that will provide improved lake access, bicycle and pedestrian trail linkages, and interpretative facilities.

(d) The secretary may provide the following capital outlay grants:

(1) Five hundred thousand dollars ($500,000) for capital outlay to an incorporated city all or part of the territory of which is located within five miles of the boundary line between San Joaquin County and Sacramento County.

(2) Two hundred fifty thousand dollars ($250,000) to the department for the renovation of a state historical point of interest near the intersection of Jack Tone Road and State Highway 88.

(e) For the purposes of this article, the Sierra Nevada-Cascade Mountain Region includes those portions of Fresno County, Kern County, Stanislaus County, and Tulare County, and counties with populations of less than 250,000 as of the 1990 United States Census, that are located in the mountains, the foothills, and the area adjacent to the geologic formations of the Sierra Nevada and Cascade mountain ranges.

Article 4.7. Murray-Hayden Urban Parks and Youth Service Program

5096.348. (a) Notwithstanding any other provision of this chapter, funds allocated pursuant to subdivision (j) of Section 5096.310 shall be allocated, upon appropriation by the Legislature, for parks, park facilities, or environmental youth service centers that are within the immediate proximity of a neighborhood that has been identified by the department as having a critical lack of park or open-space lands or deteriorated park facilities, that are in an area of significant poverty and unemployment, and that have a shortage of services for youth. Priority shall be given to capital projects that employ neighborhood residents and at-risk youth.

(b) (1) Fifty percent of the funds allocated pursuant to subdivision (j) of Section 5096.310 shall be made available on a competitive basis to heavily urbanized counties and cities or to nonprofit organizations in those counties and cities, in compliance with subdivision (a) and the matching requirements of the Roberti-Z'berg-Harris Urban Open-Space and Recreation Program Act (Chapter 3.2 (commencing with Section 5620).

(2) No more than 10 percent of the amounts made available pursuant to paragraph (1) shall be allocated to fund grants pursuant to Chapter 2.5 (commencing with Section 990) of Part 1 of Division 2 of the Welfare and Institutions Code, at least 50 percent of which shall be granted to youth service organizations eligible for tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code that are chartered by a national youth service organization.

Article 5. Wildlife Program

5096.350. (a) Funds appropriated pursuant to subdivision (m) of Section 5096.310 shall be available for expenditure by the Wildlife Conservation Board for the acquisition, development, rehabilitation, restoration, and protection of real property benefiting fish and wildlife, for the acquisition, restoration, or protection of habitat that promotes recovery of threatened, endangered, or fully protected species, maintains the genetic integrity of wildlife populations, and serves as corridors linking otherwise separate habitat to prevent habitat fragmentation, and for grants and related state administrative costs pursuant to the Wildlife Conservation Law of 1947 (Chapter 4 (commencing with Section 1300) of Division 2 of the Fish and Game Code), for the following purposes:

(1) Ten million dollars ($10,000,000) for the acquisition or restoration of wetland habitat, as follows:

(A) Five million dollars ($5,000,000) for the acquisition, preservation, restoration, and establishment, or any combination thereof, of habitat for waterfowl or other wetlands-associated

wildlife, as provided for in the Central Valley Habitat Joint Venture Component of the North American Waterfowl Management Plan and the Inland Wetlands Conservation Program. Preference shall be given to projects involving the acquisition of perpetual conservation easements; habitat development projects on lands which will be managed primarily as waterfowl habitat in perpetuity; waterfowl habitat development projects on agricultural lands; the reduction of fishery impacts resulting from supply diversions that have a direct benefit to wetlands and waterfowl habitat; or programs to establish permanent buffer areas, including, but not limited to, agricultural lands that are necessary to preserve the acreage and habitat values of existing wetlands.

(B) Five million dollars ($5,000,000) for the acquisition, development, restoration, and protection of wetlands and adjacent lands, or any combination thereof, located outside the Sacramento-San Joaquin Valley.

(2) Ten million dollars ($10,000,000) for the development, acquisition from a willing seller, or restoration of riparian habitat and watershed conservation programs.

(3) Forty-five million dollars ($45,000,000), upon appropriation by the Legislature, for the restoration, or acquisition from a willing seller, of habitat for threatened and endangered species or for the purpose of promoting the recovery of those species. Five million dollars ($5,000,000) of that amount shall be for the acquisition of property along the central coast containing coastal terrace prairie, federally listed spineflower, state listed San Francisco popcorn flower, and candidates for federal listing including ohlone tiger beetle and opler's longhorned moth. No funds may be expended pursuant to this paragraph for the acquisition of real property or other actions taken pursuant to Chapter 10 (commencing with Section 2800) of the Fish and Game Code.

(4) Thirteen million dollars ($13,000,000) for the acquisition from a willing seller, or restoration of forest lands, including, but not limited to, ancient redwoods and oak woodlands. Not more than five million dollars ($5,000,000) of this amount shall be expended on the federal Legacy Forest Program (16 U.S.C. Sec. 2103) to meet federal matching requirements and not less than five million dollars ($5,000,000) of this amount shall be allocated for the preservation of oak woodlands. Not more than five million dollars ($5,000,000) of this amount shall be expended on the federal Legacy Forest Program (16 U.S.C. Sec. 2103) to meet federal matching requirements and not less than five million dollars ($5,000,000) of this amount shall be allocated for the preservation of oak woodlands.

(5) Eighty-two million five hundred thousand dollars ($82,500,000), upon appropriation by the Legislature, to match funds contributed by federal or local agencies or nonprofit organizations for the acquisition, restoration, or protection of habitat or habitat corridors that promote the recovery of threatened, endangered, or

fully protected species. Projects funded pursuant to this paragraph may include restoration projects authorized pursuant to Public Law 105-372, the Salton Sea Reclamation Act of 1998. The board shall require matching contributions of funds, real property, or other resources from other public agencies, private parties, or nonprofit organizations, at a level designed to obtain the maximum conservation benefits to wildlife and wildlife habitat. No funds may be expended pursuant to this paragraph for the acquisition of real property or other actions taken pursuant to Chapter 10 (commencing with Section 2800) of the Fish and Game Code.

(6) One hundred million dollars ($100,000,000), upon appropriation by the Legislature, for the purpose of funding the acquisition of real property subject to a natural community conservation plan adopted pursuant to Chapter 10 (commencing with Section 2800) of the Fish and Game Code, if the acquisition of the real property is conducted in conjunction with a natural community conservation plan approved by the Department of Fish and Game prior to January 1, 1999, or if the acquisition is approved by statute.

(7) Five million dollars ($5,000,000) for environmental restoration projects for the following purposes approved pursuant to the Salton Sea Restoration Project authorized by Public Law 105-372, the Salton Sea Reclamation Act of 1998, and identified in the Final Environmental Impact Statement of the Salton Sea Restoration Project:

(A) Reduce and stabilize the overall salinity of the Salton Sea.

(B) Stabilize the surface elevation of the Salton Sea.

(C) Reclaim, in the long term, healthy fish and wildlife resources and their habitats.

(D) Enhance the potential for recreational uses of the Salton Sea.

(b) Not more than 5 percent of the funds authorized for expenditure by this section may be used for public access and wildlife-oriented public use projects.

Article 6. Lake Tahoe Program

5096.351. (a) The Legislature has recognized the need to protect and restore the fragile environment at Lake Tahoe; and the Tahoe Regional Planning Agency has prepared an Environmental Improvement Program that outlines a capital outlay approach to help achieve environmental thresholds in the Lake Tahoe Basin, which allocates funding responsibilities over the first 10 years of the program in the amounts of approximately two hundred seventy-four million dollars ($274,000,000) to the State of California, two hundred ninety-seven million dollars ($297,000,000) to the federal government, eighty-two million dollars ($82,000,000) to the State of Nevada, one hundred one million dollars ($101,000,000) to local

governments, and one hundred fifty-three million dollars ($153,000,000) to the private sector.

(b) Funds allocated pursuant to subdivision (n) of Section 5096.310 shall be available for expenditure for the development, restoration, acquisition from a willing seller, and enhancement of real property, by the California Tahoe Conservancy within the Lake Tahoe region pursuant to Title 7.42 (commencing with Section 66905) of the Government Code for the following purposes:

(1) Protecting the natural environment through preservation of environmentally sensitive lands, soil erosion control, restoration or enhancement of watershed lands, and restoration or enhancement of streams and other natural areas.

(2) Providing public access and public recreation opportunities.

(3) Enhancing and restoring wildlife areas.

(c) The provision of these funds is to meet applicable state responsibilities pursuant to the Tahoe Regional Planning Agency's Environmental Improvement Program.

(d) The allocation of these funds has been made in the expectation that the federal government, the State of Nevada, local jurisdictions, and the private sector will fulfill their respective obligations pursuant to the Environmental Improvement Program. The secretary shall report annually to the Legislature on the progress of the development and implementation of the Environmental Improvement Program, and the provision of these funds may be restricted in the event that the parties are found to be making inadequate progress or are not making good faith efforts towards fulfilling their respective obligations.

Article 7. Coastal Protection Program

5096.352. Funds allocated pursuant to subdivision (o) of Section 5096.310 shall be available for expenditure by the State Coastal Conservancy pursuant to Division 21 (commencing with Section 31000) for the acquisition from a willing seller, preservation, restoration, and enhancement of real property or an interest in real property in coastal areas and watersheds within its jurisdiction and the development of public use facilities in those areas in accordance with the following schedule:

(a) Twenty-five million dollars ($25,000,000) for projects funded pursuant to the San Francisco Bay Area Conservancy Program established pursuant to Chapter 4.5 (commencing with Section 31160) of Division 21.

(b) (1) Twenty-five million dollars ($25,000,000) shall be made available to the Santa Monica Bay Restoration Project to fund grants to public entities and nonprofit organizations to implement storm water and urban runoff pollution prevention programs, habitat restoration, and other priority actions specified in the Santa Monica

Restoration Plan. The Santa Monica Bay Watershed Council shall determine project eligibility and establish grant priority.

(2) The Santa Monica Bay Watershed Council or the State Coastal Conservancy may require the grant recipient to provide a portion of matching funds for any funding received. The council or the state conservancy may use the funds as matching funds for federal or other grant funding.

(c) Sixty-four million two hundred thousand dollars ($64,200,000) of the funds available may be expended by the State Coastal Conservancy directly or as grants to government entities and nonprofit organizations for the purposes of Division 21 (commencing with Section 31000), and for the following and related purposes, including, but not limited to, the acquisition, enhancement, restoration, protection, and development of coastal resources, beaches, waterfronts, and public accessways in accordance with the following schedule:

(1) An amount not to exceed three million dollars ($3,000,000) may be expended on regional approaches to reduce beach erosion. Up to thirteen million dollars ($13,000,000) shall be made available to the Upper Newport Bay Ecological Reserve Maintenance and Protection Fund for the restoration and protection of the Upper Newport Bay Ecological Reserve.

(2) At least fifteen million dollars ($15,000,000) shall be expended in coastal areas north of the Gualala River.

(3) At least twenty-five million dollars ($25,000,000) shall be expended within Santa Cruz, Monterey, San Luis Obispo, or Santa Barbara Counties. One million dollars ($1,000,000) shall be allocated to the City of Monterey to fund public access and open space along the waterfront.

(4) At least five million dollars ($5,000,000) shall be expended on completion of the Coastal Trail.

(5) Two million dollars ($2,000,000) shall be dedicated to projects for the Guadalupe River Trail and the San Francisco Bay Ridge Trail.

(d) Twenty-two million dollars ($22,000,000) may be expended by the State Coastal Conservancy directly or as grants to government entities and nonprofit organizations consistent with Division 21 (commencing with Section 31000), and for administrative costs in connection therewith, for the acquisition, development, rehabilitation, restoration, enhancement, and protection of real property, or other actions that benefit fish and wildlife. At least ten million dollars ($10,000,000) of those funds shall be expended in coastal areas north of the Gualala River. Eight hundred thousand dollars ($800,000) shall be spent to restore the arroyo, stickeleback, and steelhead in Orange County.

(e) Twenty-five million dollars ($25,000,000) shall be available, upon appropriation by the Legislature, to the State Coastal Conservancy and the Department of Fish and Game for direct expenditure and for grants to public agencies and nonprofit

organizations to protect, restore, acquire, and enhance habitat for salmon. These funds may be used to match federal funding available for those purposes.

(f) Twenty-five million dollars ($25,000,000) of the funds shall be allocated to acquire, protect, and restore wetlands projects that are a minimum of 400 acres in size in any county with a population greater than 5,000,000.

(g) Twelve million five hundred thousand dollars ($12,500,000) shall be allocated to acquire land needed to connect important coastal watershed and scenic areas in Orange County.

Article 8. Mountain Resource Program

5096.353. Funds allocated pursuant to subdivision (p) of Section 5096.310 shall be available to the Santa Monica Mountains Conservancy for capital outlay and grants for the acquisition from a willing seller, enhancement, and restoration of natural lands, improvement of public recreation facilities, and for grants to local agencies and nonprofit organizations to increase access to parks and recreational opportunities for underserved urban communities, in accordance with the following schedule:

Twenty-five million dollars ($25,000,000) to acquire, improve, or restore park, wildlife, or natural areas, including areas near or adjacent to units of the state park system wherever such units may be situated within a local jurisdiction within the Santa Monica Mountains Zone or Rim of the Valley Trail Corridor.

5096.354. Funds allocated pursuant to subdivision (q) of Section 5096.310 shall be available to the Coachella Valley Mountains Conservancy for expenditure for the acquisition, development, enhancement, and protection of land, and for administrative costs incurred in connection therewith, in accordance with Division 23.5 (commencing with Section 33500).

Article 9. San Joaquin River Program

5096.355. Funds allocated pursuant to subdivision (r) of Section 5096.310 shall be available to the San Joaquin River Conservancy for expenditure of the acquisition, development, enhancement, and protection of land, and for administrative costs incurred in connection therewith, in accordance with Division 22.5 (commencing with Section 32500).

Article 10. Agriculture Program

5096.356. (a) Funds allocated pursuant to subdivision (t) of Section 5096.310 shall be available to the Department of Conservation for grants, on a competitive basis, to state and local agencies and nonprofit organizations for farmland protection and

administration of the Agricultural Land Stewardship Program Act of 1995 (Division 10.2 (commencing with Section 10200)). This purpose shall include, but not be limited to, the placement of improvements and acquisition of agricultural conservation easements and other interests in land pursuant to the Agricultural Land Stewardship Program.

(b) At least 20 percent of the funds allocated pursuant to subdivision (t) of Section 5096.310 shall be available for projects that preserve agricultural lands and protect water quality in the counties that serve the San Pablo Bay.

Article 11. Fish and Game Program

5096.357. (a) Funds allocated pursuant to paragraph (1) of subdivision (v) of Section 5096.310 shall be available to the Department of Fish and Game for the development, enhancement, restoration, and preservation of land pursuant to Sections 1580 and 10503 of, and subdivision (b) of Section 1525 of, the Fish and Game Code. The provision of these funds shall be in accordance with an expenditure plan developed by the Department of Fish and Game and approved by the Department of Finance.

(b) Funds allocated pursuant to paragraph (2) of subdivision (v) of Section 5096.310 shall be deposited in the State Duck Stamp Account of the Fish and Game Preservation Fund and shall be available for expenditure by the Department of Fish and Game for the exclusive purpose of acquiring habitat preservation and enhancement agreements on private wetlands pursuant to the California Waterfowl Habitat Program—Phase II and administrative costs incurred in connection therewith.

Article 12. California Indian Tribe Participation

5096.358. To the extent funds authorized pursuant to this chapter are available for competitive grants to local government entities, federally recognized California Indian tribes may apply for those grants, the tribe's application shall be considered on its merits, and the tribes shall expend any funds received for the purpose authorized by this chapter for which the funds are made available.

Article 13. Fiscal Provisions

5096.360. Bonds in the total amount of two billion one hundred million dollars ($2,100,000,000), not including the amount of any refunding bonds issued in accordance with Section 5096.370, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes set forth in Section 5096.310 and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government

Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

5096.361. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

5096.362. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Finance Committee is hereby created. For purposes of this chapter, the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Governor, the Controller, the Director of Finance, the Treasurer, and the secretary, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the secretary is designated the "board."

5096.363. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter to carry out Section 5096.310 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

5096.364. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

5096.365. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 5096.366, appropriated without regard to fiscal years.

5096.366. For purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized to be sold for the purpose of carrying out this chapter. Any amount withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

5096.367. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

5096.367.5. Actual costs incurred in connection with administering programs authorized under the categories specified in Section 5096.310 shall be paid from the funds authorized by this act.

5096.368. The secretary may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for purposes of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The secretary shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

5096.369. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.370. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state of the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

5096.371. Notwithstanding any provision of this chapter or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal

law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.372. (a) The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

(b) Funds provided pursuant to this chapter, and any appropriation or transfer of those funds, shall not be deemed to be a transfer of funds for the purposes of Chapter 9 (commencing with Section 2780) of Division 3 of the Fish and Game Code.

SEC. 1.5. Chapter 1.693 (commencing with Section 5096.400) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.693. CAMP PENDLETON MARINE BASE

5096.400. To the extent permitted by federal law, if the Camp Pendleton Marine Base in the County of San Diego ceases to be used as a federal facility, it shall be converted to an open-space area or greenbelt that shall be administered by the department.

SEC. 2. Section 1 of this act shall take effect upon adoption by the voters of the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act), as set forth in Section 1 of this act.

SEC. 3. (a) Notwithstanding the requirements of any other provision of law, the Secretary of State shall submit Section 1 of this act to the voters at the March 7, 2000, statewide general election.

(b) Notwithstanding Section 13115 of the Elections Code, if Section 1 of this act is placed on the ballot by the Legislature for the March 7, 2000, statewide general election after the 131-day deadline set forth in Section 9040 of the Elections Code, it shall be placed on the ballot following all other ballot measures in the order in which it qualified as determined by chapter number.

(c) The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding the bond act contained in Section 1 of this act. If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding this act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall be mailed separately.

SEC. 4. (a) Notwithstanding any other provision of law, with respect to the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act), all ballots of the election shall have printed thereon and in a square

thereof, exclusively the words: "Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act)" and in the same square under those words, the following in 8-point type: "This act provides two billion one hundred million dollars ($2,100,000,000) to protect land around lakes, rivers, and streams and the coast to improve water quality and ensure clean drinking water; to protect forests and plant trees to improve air quality; to preserve open space and farmland threatened by unplanned development; to protect wildlife habitats; and to repair and improve the safety of state and neighborhood parks. [At this point, the Attorney General shall include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code]." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

(b) Notwithstanding Sections 13247 and 13281 of the Elections Code, the language in subdivision (a) shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

(c) Notwithstanding Section 13282 of the Elections Code, the public shall be permitted to examine the condensed statement of the ballot title in subdivision (a) for not more than eight days, and the financial impact statement from the time it is received by the Secretary of State until the end of the eight days. Any voter may seek a writ of mandate for the purpose of requiring any statement of the ballot label, or portion thereof, to be amended or deleted only within that eight-day period.

(d) Where the voting in the election is done by means of voting machines used pursuant to law in a manner that carries out the intent of this section, the use of the voting machines and the expression of the voter's choice by means thereof are in compliance with this section.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act), set forth in Section 1 of this act, may be submitted for voter approval at the earliest possible time, and in order to make provision

for the use of a federal military facility as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 462

An act to add and repeal Section 53084 of the Government Code, and to add and repeal Section 33426.7 of the Health and Safety Code, relating to local government.

[Approved by Governor September 22, 1999. Filed with Secretary of State September 22, 1999.]

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

SECTION 1. (a) The Legislature finds and declares that the provision of financial assistance by local agencies to automobile dealerships and big box retailers that seek to obtain public funds from local agencies as subsidies for their relocation, results in the loss of public funds available for public purposes, impedes the implementation of good planning, encourages unfair competition between local agencies, and does not result in a public benefit to the people of the state.

(b) The Legislature further finds and declares that limiting this competition for sales tax revenues is an issue of statewide concern and therefore it is necessary to apply the provisions of this act to all cities and counties in the state.

SEC. 2. Section 53084 is added to the Government Code, to read:

53084. (a) Notwithstanding any other provision of this part, a local agency shall not provide any form of financial assistance to an automobile dealership or big box retailer, or a business entity that sells or leases land to an automobile dealership or big box retailer, that is relocating from the territorial jurisdiction of one local agency to the territorial jurisdiction of another local agency but within the same market area, unless the legislative body of the local agency to which the relocation will occur offers the contract to the local agency from which the relocation is occurring pursuant to this section.

(b) If the automobile dealership or big box retailer is relocating within the same county, including both incorporated and unincorporated territory, or to an adjacent county or a city within an adjacent county, the local agency proposing to offer financial assistance shall prepare a report that describes the market area for the automobile dealership or big box retailer that is relocating. The report shall include the information required to be contained in the resolution pursuant to subdivision (e). The report shall refer to and cite the independent literature, trade publications, and recognized and established business policies and practices describing the market area for the automobile dealership or big box retailer that is

relocating. The report shall conclude that the relocation is occurring either within the same market area or outside the same market area. The report shall be available to the public not later than 45 days prior to the date of the public hearing required by subdivision (d). In addition, the notice of the public hearing and the report shall be mailed to the local agency from which the relocation is occurring.

(c) (1) If the report prepared pursuant to subdivision (b) concludes that the automobile dealership or big box retailer is relocating within the same market area, at least 45 days prior to the public hearing required pursuant to subdivision (d), the agency shall notify the local agency from which the relocation is occurring of its intent to give financial assistance and shall send to that local agency a contract that has been approved by a two-thirds vote of the legislative body of the local agency and that apportions the sales tax generated from the automobile dealership or big box retailer after the relocation between the two local agencies in the following manner:

(A) The annual amount of assistance shall be subtracted from the annual sales tax.

(B) The difference shall be divided equally between the two local agencies for the first 10 fiscal years following the relocation. However, in no event shall the local agency from which the relocation is occurring receive more sales tax than it received from the automobile dealership or big box retailer in the fiscal year prior to the relocation.

(C) After the first 10 fiscal years following the relocation, the contract shall terminate and the apportionment shall end unless the contract is extended by both local agencies.

(2) The local agency from which the relocation is occurring shall have 30 days after receipt of the contract to approve the contract by enacting a resolution or ordinance approved by a two-thirds vote of its legislative body.

(d) Prior to a local agency giving any financial assistance to an automobile dealership or big box retailer that is relocating, the agency shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the local agency at least once per week for at least three successive weeks, as specified in Section 6063 of the Government Code, prior to the hearing.

(e) The resolution approving financial assistance shall do all of the following:

(1) Identify the present name and, if different, the former name of the relocating automobile dealership or big box retailer.

(2) Identify the address, including the local agency, from which the automobile dealership or big box retailer has moved or will move.

(3) Identify the address, including the local agency, to which the automobile dealership or big box retailer will move.

(4) Contain one of the following findings:

(A) That the automobile dealership or big box retailer is not relocating within the same market area.

(B) That the automobile dealership or big box retailer is relocating within the same market area but that a contract containing the terms specified in subdivision (c) has been approved by the local agency's legislative body, and offered to the local agency from which the relocation has occurred, which has approved the agreement, entered into another agreement acceptable to both local agencies, or has not accepted the proposed contract within the 30-day period.

These findings shall be final and conclusive as to all persons except for the automobile dealership or big box retailer that is the subject of the findings and the community from which the relocation has occurred, all of which may bring an action to challenge these findings.

(f) As used in this section, the following terms have the following meaning:

(1) "Big box retailer" means a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code.

(2) "Local agency" means a chartered or general law city, a chartered or general law county, or a city and county. "Local agency" does not include a redevelopment agency that is subject to Section 33426.7 of the Health and Safety Code.

(3) "Financial assistance" includes, but is not limited to, any of the following:

(A) Any appropriation of public funds, including loans, grants, or subsidies or the payment for or construction of parking improvements.

(B) Any tax incentive, including tax exemptions, rebates, reductions, or moratoria of a tax, including any rebate or payment based upon the amount of sales tax generated from the automobile dealership or big box retailer.

(C) The sale or lease of real property at a cost that is less than fair market value.

(D) Payment for, forgiveness of, or reduction of fees.

(4) (A)"Market area" means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations as being an area that is large enough to support the location of the specific automobile dealership or the specific big box retailer that is relocating.

(B) With respect to an automobile dealership, a "market area" shall not extend further than 40 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the automobile dealership is relocating and

ending at the location to which the automobile dealership is relocating.

(C) With respect to a big box retailer, a "market area" shall not extend further than 25 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the big box retailer is relocating and ending at the location to which the big box retailer is relocating.

(5) "Relocating" means the closing of an automobile dealership or big box retailer in one location and the opening of an automobile dealership or big box retailer in another location within a 365-day period when a person or business entity has an ownership interest in both the automobile dealership or big box retailer that has closed or will close and the one that is opening. "Relocating" does not mean and shall not include the closing of an automobile dealership or big box retailer because the automobile dealership or big box retailer has been or will be acquired or has been or will be closed as a result of the use of eminent domain.

(g) This section does not apply to local agency assistance in the construction of public improvements that serve all or a portion of the jurisdiction of the local agency and that are not required to be constructed as a condition of approval of the automobile dealership or big box retailer. This section also does not prohibit assistance in the construction of public improvements that are being constructed for a development other than the automobile dealership or big box retailer.

(h) Notwithstanding Section 7550.5, on or before January 1, 2004, the California Research Bureau shall report to the Legislature and the Governor regarding the implementation of this section. The report shall identify the reports prepared pursuant to subdivision (b), the contracts offered pursuant to subdivision (c), and the resolutions approved pursuant to subdivision (e). The report may include any additional information that the bureau finds relevant. The report may also include recommendations for legislative action, including, but not limited to, amending, or extending the repeal date of, this section.

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

SEC. 3. Section 33426.7 is added to the Health and Safety Code, to read:

33426.7. (a) Notwithstanding any other provision of this part, a redevelopment agency shall not provide any form of financial assistance to an automobile dealership or big box retailer, or a business entity that sells or leases land to an automobile dealership or big box retailer, that is relocating from the territorial jurisdiction of the community to the territorial jurisdiction of another community but within the same market area, unless the legislative body of the community to which the relocation will occur offers the contract to

the community from which the relocation is occurring pursuant to this section.

(b) If the automobile dealership or big box retailer is relocating within the same county, including both incorporated and unincorporated territory, or to an adjacent county or a city within an adjacent county, the redevelopment agency proposing to offer financial assistance shall prepare a report that describes the market area for the automobile dealership or big box retailer that is relocating. The report shall include the information required to be contained in the resolution pursuant to subdivision (e). The report shall refer to and cite the independent literature, trade publications, and recognized and established business policies and practices describing the market area for the automobile dealership or big box retailer that is relocating. The report shall conclude that the relocation is occurring either within the same market area or outside the same market area. The report shall be available to the public not later than 45 days prior to the date of the public hearing required by subdivision (d). In addition, the notice of the public hearing and the report shall be mailed to the community from which the relocation is occurring.

(c) (1) If the report prepared pursuant to subdivision (b) concludes that the automobile dealership or big box retailer is relocating within the same market area, at least 45 days prior to the public hearing required pursuant to subdivision (d), the agency shall notify the community from which the relocation is occurring of its intent to give financial assistance and shall send to that community a contract that has been approved by a two-thirds vote of the legislative body of the agency and that apportions the sales tax generated from the automobile dealership or big box retailer after the relocation between the two communities in the following manner:

(A) The annual amount of assistance shall be subtracted from the annual sales tax.

(B) The difference shall be divided equally between the two communities for the first 10 fiscal years following the relocation. However, in no event shall the community from which the relocation is occurring receive more sales tax than it received from the automobile dealership or big box retailer in the fiscal year prior to the relocation.

(C) After the first 10 fiscal years following the relocation, the contract shall terminate and the apportionment shall end unless the contract is extended by both communities.

(2) The community from which the relocation is occurring shall have 30 days after receipt of the contract to approve the contract by enacting a resolution or ordinance approved by a two-thirds vote of its legislative body.

(d) Prior to a redevelopment agency giving any financial assistance to an automobile dealership or big box retailer that is

relocating, the agency shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the community at least once per week for at least three successive weeks, as specified in Section 6063 of the Government Code, prior to the hearing.

(e) The resolution approving financial assistance shall do all of the following:

(1) Identify the present name and, if different, the former name of the relocating automobile dealership or big box retailer.

(2) Identify the address, including the city or county, from which the automobile dealership or big box retailer has moved or will move.

(3) Identify the address, including the city or county, to which the automobile dealership or big box retailer will move.

(4) Contain one of the following findings:

(A) That the automobile dealership or big box retailer is not relocating within the same market area.

(B) That the automobile dealership or big box retailer is relocating within the same market area but that a contract containing the terms specified in subdivision (c) has been approved by the agency's legislative body, and offered to the community from which the relocation has occurred, which has approved the agreement, entered into another agreement acceptable to both communities, or has not accepted the proposed contract within the 30-day period.

These findings shall be final and conclusive as to all persons except for the automobile dealership or big box retailer that is the subject of the findings and the community from which the relocation has occurred, all of which may bring an action to challenge these findings.

(f) As used in this section, the following terms have the following meaning:

(1) "Big box retailer" means a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code.

(2) "Community" and "territorial jurisdiction" have the meanings specified in Sections 33002 and 33120, respectively.

(3) "Financial assistance" includes, but is not limited to, any of the following:

(A) Any appropriation of public funds, including loans, grants, or subsidies or the payment for or construction of parking improvements.

(B) Any tax incentive, including tax exemptions, rebates, reductions, or moratoria of a tax, including any rebate or payment based upon the amount of sales tax generated from the automobile dealership or big box retailer.

(C) The sale or lease of real property at a cost that is less than fair market value.

(D) Payment for, forgiveness of, or reduction of fees.

(4) (A) "Market area" means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations as being an area that is large enough to support the location of the specific automobile dealership or the specific big box retailer that is relocating.

(B) With respect to an automobile dealership, a "market area" shall not extend further than 40 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the automobile dealership is relocating and ending at the location to which the automobile dealership is relocating.

(C) With respect to a big box retailer, a "market area" shall not extend further than 25 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the big box retailer is relocating and ending at the location to which the big box retailer is relocating.

(5) "Relocating" means the closing of an automobile dealership or big box retailer in one location and the opening of an automobile dealership or big box retailer in another location within a 365-day period when a person or business entity has an ownership interest in both the automobile dealership or big box retailer that has closed or will close and the one that is opening. "Relocating" does not mean and shall not include the closing of an automobile dealership or big box retailer because the automobile dealership or big box retailer has been or will be acquired or has been or will be closed as a result of the use of eminent domain.

(g) This section does not apply to agency assistance in the construction of public improvements that serve all or a portion of a project area and that are not required to be constructed as a condition of approval of the automobile dealership or big box retailer. This section also does not prohibit assistance in the construction of public improvements that are being constructed for a development other than the automobile dealership or big box retailer.

(h) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2004, the California Research Bureau shall report to the Legislature and the Governor regarding the implementation of this section. The report shall identify the reports prepared pursuant to subdivision (b), the contracts offered pursuant to subdivision (c), and the resolutions approved pursuant to subdivision (e). The report may include any additional information that the bureau finds relevant. The report may also include recommendations for legislative action, including, but not limited to, amending, or extending the repeal date of, this section.

(i) This section 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.

CHAPTER 463

An act to add Section 19041.5 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 19041.5 is added to the Revenue and Taxation Code, to read:

19041.5. (a) Notwithstanding any other provision of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001), any amount paid as a tax or in respect of a tax that is paid after the mailing of a notice of proposed deficiency assessment and designated by the taxpayer as a deposit in the nature of a cash bond made to stop the running of interest, shall not be considered a payment of tax for purposes of filing a claim for refund pursuant to Section 19306 or an action pursuant to Section 19384 until either of the following occurs:

(1) The taxpayer provides a written statement to the Franchise Tax Board specifying that the deposit shall be a payment of tax for purposes of Section 19306, 19335, or 19384.

(2) The deficiency assessed becomes due and payable in accordance with Section 19049.

(b) The Franchise Tax Board may promulgate rules and regulations to adopt applicable provisions of federal Revenue Procedure 84-58, 1984-2 C.B. 501, for purposes of this section.

CHAPTER 464

An act to amend Section 97.2 of the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 97.2 of the Revenue and Taxation Code, as amended by Chapter 78 of the Statutes of 1999, is amended to read:

97.2. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section shall be modified for the 1992–93 fiscal year pursuant to subdivisions (a) to (d), inclusive, and for the 1997–98 and 1998–99 fiscal years pursuant to subdivision (e), as follows:

(a) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each county shall be reduced by the dollar amounts indicated as follows, multiplied by 0.953649:

	Property Tax Reduction per County
Alameda	$ 27,323,576
Alpine	5,169
Amador	286,131
Butte	846,452
Calaveras	507,526
Colusa	186,438
Contra Costa	12,504,318
Del Norte	46,523
El Dorado	1,544,590
Fresno	5,387,570
Glenn	378,055
Humboldt	1,084,968
Imperial	998,222
Inyo	366,402
Kern	6,907,282
Kings	1,303,774
Lake	998,222
Lassen	93,045
Los Angeles	244,178,806
Madera	809,194
Marin	3,902,258
Mariposa	40,136
Mendocino	1,004,112
Merced	2,445,709
Modoc	134,650

Mono	319,793
Monterey	2,519,507
Napa	1,362,036
Nevada	762,585
Orange	9,900,654
Placer	1,991,265
Plumas	71,076
Riverside	7,575,353
Sacramento	15,323,634
San Benito	198,090
San Bernardino	14,467,099
San Diego	17,687,776
San Francisco	53,266,991
San Joaquin	8,574,869
San Luis Obispo	2,547,990
San Mateo	7,979,302
Santa Barbara	4,411,812
Santa Clara	20,103,706
Santa Cruz	1,416,413
Shasta	1,096,468
Sierra	97,103
Siskiyou	467,390
Solano	5,378,048
Sonoma	5,455,911
Stanislaus	2,242,129
Sutter	831,204
Tehama	450,559
Trinity	50,399
Tulare	4,228,525
Tuolumne	740,574
Ventura	9,412,547
Yolo	1,860,499
Yuba	842,857

(2) Notwithstanding paragraph (1), the amount of the reduction specified in that paragraph for any county or city and county that has been materially and substantially impacted as a result of a federally declared disaster, as evidenced by at least 20 percent of the cities, or cities and unincorporated areas of the county representing 20 percent of the population within the county suffering substantial damage, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date

of this section, shall be reduced by that portion of five million dollars ($5,000,000) determined for that county or city and county pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each county and city and county in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each county and city and county as described in subparagraph (A) its share of five million dollars ($5,000,000) on the basis of that county's population relative to the total population of all counties described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(b) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each city, except for a newly incorporated city that did not receive property tax revenues in the 1991–92 fiscal year, shall be reduced by 9 percent. In making the above computation with respect to cities in Alameda County, the computation for a city described in paragraph (6) of subdivision (a) of Section 100.7, as added by Section 73.5 of Chapter 323 of the Statutes of 1983, shall be adjusted so that the amount multiplied by 9 percent is reduced by the amount determined for that city for "museums" pursuant to paragraph (2) of subdivision (h) of Section 95.

(2) Notwithstanding paragraph (1), the amount of the reduction determined pursuant to that paragraph for any city that has been materially and substantially impacted as a result of a federally declared disaster, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of fifteen million dollars ($15,000,000) determined for that city pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each city in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each city as described in subparagraph (A) its share of fifteen million dollars ($15,000,000) on the basis of that city's population relative to the total population of all cities described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(4) In the 1992–93 fiscal year and each fiscal year thereafter, the auditor shall adjust the computations required pursuant to Article 4 (commencing with Section 98) so that those computations do not

result in the restoration of any reduction required pursuant to this section.

(c) (1) Subject to paragraph (2), the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall be reduced by 35 percent. For purposes of this subdivision, "revenues that are pledged to debt service" include only those amounts required to pay debt service costs in the 1991–92 fiscal year on debt instruments issued by a special district for the acquisition of capital assets.

(2) No reduction pursuant to paragraph (1) for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the 1989–90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts (not including any annual revenues from fiscal years following the 1989–90 fiscal year). With respect to any special district, as defined pursuant to subdivision (m) of Section 95, that is allocated property tax revenue pursuant to this chapter but does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, the auditor shall determine the total annual revenues for that special district from the information in the 1989–90 edition of the State Controller's Report on Financial Transactions Concerning Counties. With respect to a special district that did not exist in the 1989–90 fiscal year, the auditor may use information from the first full fiscal year, as appropriate, to determine the total annual revenues for that special district. No reduction pursuant to paragraph (1) for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(3) The auditor in each county shall, on or before January 15, 1993, and on or before January 30 of each year thereafter, submit information to the Controller concerning the amount of the property tax revenue reduction to each special district within that county as a result of paragraphs (1) and (2). The Controller shall certify that the calculation of the property tax revenue reduction to each special district within that county is accurate and correct, and submit this information to the Director of Finance.

(A) The Director of Finance shall determine whether the total of the amounts of the property tax revenue reductions to special districts, as certified by the Controller, is equal to the amount that would be required to be allocated to school districts and community college districts as a result of a three hundred seventy-five million dollar ($375,000,000) shift of property tax revenues from special districts for the 1992–93 fiscal year. If, for any year, the total of the

amount of the property tax revenue reductions to special districts is less than the amount as described in the preceding sentence, the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall, subject to subparagraph (B), be reduced by an amount up to 5 percent of the amount subject to reduction for that district pursuant to paragraphs (1) and (2).

(B) No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the most recent State Controller's Report on Financial Transactions Concerning Special Districts. No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(C) In no event shall the amount of the property tax revenue loss to a special district derived pursuant to subparagraphs (A) and (B) exceed 40 percent of that district's property tax revenues or 10 percent of that district's total revenues, from whatever source.

(4) For the purpose of determining the total annual revenues of a special district that provides fire protection or fire suppression services, all of the following shall be excluded from the determination of total annual revenues:

(A) If the district had less than two million dollars ($2,000,000) in total annual revenues in the 1991–92 fiscal year, the revenue generated by a fire suppression assessment levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(B) The total amount of all funds, regardless of the source, that are appropriated to a district, including a fire department, by a board of supervisors pursuant to Section 25642 of the Government Code or Chapter 7 (commencing with Section 13890) of Part 2.7 of Division 12 of the Health and Safety Code for fire protection. The amendment of this subparagraph by Chapter 290 of the Statutes of 1997 shall not be construed to affect any exclusion from the total annual revenues of a special district that was authorized by this subparagraph as it read prior to that amendment.

(C) The revenue received by a district as a result of contracts entered into pursuant to Section 4133 of the Public Resources Code.

(5) For the purpose of determining the total annual revenues of a resource conservation district, all of the following shall be excluded from the determination of total annual revenues:

(A) Any revenues received by that district from the state for financing the acquisition of land, or the construction or improvement of state projects, and for which that district serves as the fiscal agent in administering those state funds pursuant to an agreement entered into between that district and a state agency.

(B) Any amount received by that district as a private gift or donation.

(C) Any amount received as a county grant or contract as supplemental to, or independent of, that district's property tax share.

(D) Any amount received by that district as a federal or state grant.

(d) (1) The amount of property tax revenues not allocated to the county, cities within the county, and special districts as a result of the reductions calculated pursuant to subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund to be established in each county. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1991–92 fiscal year.

(2) The auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district and county office of education in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district and county office of education. In no event shall any additional money be allocated from the fund to a school district or county office of education upon that school district or county office of education becoming an excess tax school entity.

(3) The auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any

additional money be allocated from the fund to a community college district upon that district becoming an excess tax school entity.

(4) (A) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2).

(B) (i) For the 1995–96 fiscal year and each fiscal year thereafter except the 1999–2000 fiscal year, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall, subject to clauses (ii) and (iii), allocate those excess funds to the county superintendent of schools. Funds allocated pursuant to this subparagraph shall be counted as property tax revenues for special education programs in augmentation of the amount calculated pursuant to Section 2572 of the Education Code, to the extent that those property tax revenues offset state aid for county offices of education and school districts within the county pursuant to subdivision (c) of Section 56836.08 of the Education Code.

(ii) For the 1995–96 fiscal year only, this subparagraph shall have no application to the County of Mono and the amount allocated pursuant to this subparagraph in the County of Marin shall not exceed five million dollars ($5,000,000).

(iii) For the 1996–97 fiscal year only, the total amount of funds allocated by the auditor pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 shall not exceed that portion of two million five hundred thousand dollars ($2,500,000) that corresponds to the county's proportionate share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 for the 1995–96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(iv) For the 1999–2000 fiscal year, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate the funds to the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. This clause shall be operative for the 1999–2000 fiscal year only to the extent that moneys are appropriated for purposes of this clause in the Budget Act of 1999 by an appropriation that specifically references this clause.

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996–97 fiscal year, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad valorem property tax revenue allocations for the 1997–98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 or its predecessor section for the 1993–94 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than amounts deposited in the Educational Revenue Augmentation Fund pursuant to Section 33681 of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(e) (1) For the 1997–98 fiscal year:

(A) The amount of property tax revenue deemed allocated in the prior fiscal year to any city subject to the reduction specified in paragraph (2) of subdivision (b) shall be reduced by an amount that is equal to the difference between the amount determined for the city pursuant to paragraph (1) of subdivision (b) and the amount of the reduction determined for the city pursuant to paragraph (2) of subdivision (b).

(B) The amount of property tax revenue deemed allocated in the prior fiscal year to any county or city and county subject to the reduction specified in paragraph (2) of subdivision (a) shall be reduced by an amount that is equal to the difference between the amount specified for the county or city and county pursuant to paragraph (1) of subdivision (a) and the amount of the reduction determined for the county or city and county pursuant to paragraph (2) of subdivision (a).

(2) The amount of property tax revenues not allocated to a city or city and county as a result of this subdivision shall be deposited in the Educational Revenue Augmentation Fund described in subparagraph (A) of paragraph (1) of subdivision (d).

(3) For purposes of allocations made pursuant to Section 96.1 for the 1998–99 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision shall be deemed property tax revenues allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(f) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 97.03 of the Revenue and Taxation Code, as added by Senate Bill 617 of the 1991–92 Regular Session.

CHAPTER 465

An act to add Section 22164 to, to add Chapter 27.5 (commencing with Section 24250) to Part 13 of, and to repeal Sections 22315, 22316, and 22317 of, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 22164 is added to the Education Code, to read:

22164. "Replacement benefits program" means the program established pursuant to Chapter 27.5 (commencing with Section 24250) in compliance with the provisions of Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415(m)) as applicable to a governmental plan, as defined in Section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 414(d)).

SEC. 2. Section 22315 of the Education Code is repealed.

SEC. 3. Section 22316 of the Education Code is repealed.

SEC. 4. Section 22317 of the Education Code is repealed.

SEC. 5. Chapter 27.5 (commencing with Section 24250) is added to Part 13 of the Education Code, to read:

CHAPTER 27.5. REPLACEMENT BENEFITS PROGRAM

24250. It is the intent of the Legislature in repealing Sections 22316 and 22317 and adding Section 24275 to revoke the election made on behalf of the plan under Section 415(b)(10) of the Internal Revenue Code of 1986 and to provide for restoration of benefits pursuant to Section 24275.

24255. (a) There is in the State Treasury a trust fund to be known as the Teachers' Replacement Benefits Program Fund. There shall be deposited directly in that fund, and not transferred from the Teachers' Retirement Fund, that portion of employer contributions determined by the board as necessary to fund the replacement benefits program.

(b) Notwithstanding Section 13340 of the Government Code, moneys in the Teachers' Replacement Benefits Program Fund are continuously appropriated without regard to fiscal years to pay

benefits to members and beneficiaries of the defined benefit program, and to pay related administrative expenses.

(c) The board may authorize the transfer and disbursement of funds from the Teachers' Replacement Benefits Program Fund for the purpose of carrying into effect this chapter upon the signature of either or both of its chairperson and vice chairperson or the chief executive officer or any employee of the system designated by the chief executive officer.

(d) Disbursements of money from the Teachers' Replacement Benefits Program Fund of whatever nature shall be made upon claims duly audited in the manner prescribed for the disbursement of other public funds except that notwithstanding the foregoing disbursements may be made to return funds deposited in the fund in error.

24260. (a) A replacement benefits program is hereby established under this chapter for the exclusive purpose of providing to members or their beneficiaries in accordance with subdivisions (c) and (d) that portion of the annual benefit of the member or the member's beneficiaries otherwise payable under the provisions of this part that exceeds the limitations on the dollar amount of annual benefit under Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415) as applicable to a governmental plan, as defined in subdivision (d) of Section 414.

(b) The replacement benefits program established by this chapter is intended to comply with the provisions of Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415(m)).

(c) In any case in which (1) the annual benefit of the member or the member's beneficiaries for the calendar year otherwise payable under the terms of this part, as measured under the provisions of Section 415(b)(2) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415(b)(2)) and adjusted to exclude the portion of the annual benefit attributable to employee contributions that are not "picked up" under Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 414(h)(2)) or attributable to rollover contributions described in Section 415(b)(2) of the Internal Revenue Code of 1986, exceeds (2) the limitation on the dollar amount of an annual benefit applicable for the calendar year under Section 415(b)(1)(A) or subdivision (e) as applicable to a governmental plan, as defined in Section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 414(d)), the amount of the portion of the annual benefit shall be paid to the member or the member's beneficiaries under the replacement benefit program in the manner described in subdivision (d). In no event shall the portion of the annual benefit from the replacement benefits program be payable from the assets of the Teachers' Retirement Fund. In no event shall the replacement benefits program provide to the member or the member's beneficiaries, directly or indirectly, any election to defer compensation.

(d) Any portion of the annual benefit of a member or the member's beneficiaries for the year described in subdivision (c) shall be payable, at the same time and in the same form as the remainder of the annual benefit and subject to the terms and conditions of this part except as otherwise provided under this section, from the proceeds of the employer contributions due under Section 22950, and, notwithstanding Section 22956, prior to the deposit of those employer contributions in the State Treasury to the Teachers' Retirement Fund. Upon receipt of the warrants for the employer contributions as described in Section 23001, the board shall retain and place in the Teachers' Replacement Benefits Program Fund only the amounts of employer contributions as are necessary for the exclusive purpose of paying currently the monthly installment next due of the portion of the annual benefit payable from the replacement benefits program to the member or the member's beneficiaries as well as any administrative expenses associated with the replacement benefits program. Amounts shall not be accumulated in the Teachers' Replacement Benefits Program Fund for the payment of future benefits, and a member or the member's beneficiaries who are to receive the portion of his or her annual benefit under the replacement benefits program shall have no entitlement to amounts in the Teachers' Replacement Benefits Program Fund until distributed to him or her as a benefit.

(e) The portion of the annual benefit payable under the replacement benefits program shall be subject to withholding for any applicable income or employment taxes.

(f) The board may by plan amendment amend the terms of the replacement benefits program established under this section as appropriate to comply with applicable federal or state law.

(g) All references to sections of the Internal Revenue Code of 1986 are to such sections as are amended from time to time or their successor sections.

24270. In the case of any member or member's beneficiaries whose annual benefit otherwise payable under the provisions of this part has been reduced for any year by reason of application of the 100 percent of compensation limitation on benefits under Section 415(b)(1)(B) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415(b)(1)(B)) the reduced annual benefit shall be restored to its full amount otherwise payable for that year. In the case of restorations in respect of annual benefits that were paid prior to January 1, 2000, the additional benefit amount shall be paid by the system to the member or the member's beneficiaries on or before April 1, 2000.

24275. (a) Notwithstanding any other provision of this part, the benefits payable to any person shall be subject to the limitations of Section 415 (other than Section 415(b)(1)(B)) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415) as applicable to a governmental plan as those sections are amended from time to time or their successor sections.

(b) This section and Section 24270 shall be applicable to benefits payable in all plan years beginning before, on, or after enactment of this chapter.

CHAPTER 466

An act to add Section 16365.5 to the Government Code, relating to county revenues, and making an appropriation therefor.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 16365.5 is added to the Government Code, to read:

16365.5. Any federal funds received by the state as a result of federally administered timber harvesting pursuant to Section 500 of Title 16 of the United States Code, Section 60 of Title 30 of the United States Code, Section 1181f of Title 43 of the United States Code, or any other federal revenue sharing program that relates to timber harvesting shall be deposited in the Federal Trust Fund and allocated by the Controller as follows:

(a) Payments that are due to counties shall be made within 30 working days after the date on which they were received from the federal government.

(b) A county that has informed the Controller that it prefers to receive its funds by electronic transfer shall have funds transmitted in that manner.

(c) The state shall pay interest to eligible counties on these federal funds at a rate equal to the interest accrued in the Pooled Money Investment Account over the term that the funds were held by the state before being paid to eligible counties.

(d) The Controller shall notify counties regarding anticipated payments under this section as soon as possible after the state receives the information from the federal government.

CHAPTER 467

An act to amend Sections 42002 and 42010 of, and to add and repeal Sections 42023.1, 42023.2, 42023.3, 42023.4, 42023.5, and 42023.6 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 42002 of the Public Resources Code is amended to read:

42002. The following definitions govern the construction of this chapter:

(a) "Applicant" means a person, as defined in Section 40170, who applies for designation as a Recycling Market Development Zone.

(b) "Postconsumer waste material" means any product generated by a business or a consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, and disposal, and which does not include secondary waste material.

(c) "Recycling-based business" means any business that increases market demand for, or adds value to, postconsumer waste material or secondary waste material.

(d) "Recycling market development zone" or "zone" means any single or joint, contiguous parcels of property that, based on the determination of the board, meets the following criteria:

(1) The area has been zoned an appropriate land use for the development of commercial, industrial, or manufacturing purposes.

(2) The area is identified in the countywide or regional agency integrated waste management plan as part of the market development area.

(3) The area is located in a city with an existing postconsumer waste collection infrastructure.

(4) The area may be used to establish commercial, manufacturing, or industrial processes which would produce end products that consist of not less than 50 percent recycled materials.

(e) "Revolving loan program" means the Recycling Market Development Revolving Loan Program established pursuant to Section 42023.1.

(f) "Secondary waste material" means industrial byproducts which would otherwise go to disposal facilities and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes, such as home scrap and mill broke.

(g) "Subaccount" means the Recycling Market Development Revolving Loan Subaccount created pursuant to subdivision (a) of Section 42023.1.

SEC. 2. Section 42010 of the Public Resources Code is amended to read:

42010. (a) The local governing body may, either by ordinance or resolution, upon the recommendation of the appropriate land use planning agency, propose eligible parcels of property within its jurisdiction as a recycling market development zone.

(b) The proposal of a recycling market development zone shall be based upon the following findings by the local governing body:

(1) The current waste management practices and conditions are favorable to the development of postconsumer waste material markets.

(2) The designation as a recycling market development zone is necessary to assist in attracting private sector recycling investments to the area.

SEC. 3. Section 42023.1 is added to the Public Resources Code, to read:

42023.1. (a) The Recycling Market Development Revolving Loan Subaccount is hereby created in the account for the purpose of providing loans for purposes of the Recycling Market Development Revolving Loan Program established pursuant to this article.

(b) Notwithstanding Section 13340 of the Government Code, the funds deposited in the subaccount are hereby continuously appropriated to the board without regard to fiscal year for making loans pursuant to this article.

(c) The board may expend interest earnings on funds in the subaccount for administrative expenses incurred in carrying out the Recycling Market Development Revolving Loan Program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act.

(d) The money from any loan repayments and fees, including, but not limited to, principal and interest repayments, fees and points, recovery of collection costs, income earned on any asset recovered pursuant to a loan default, and funds collected through foreclosure actions, shall be deposited in the subaccount.

(e) All interest accruing on interest payments from loan applicants shall be deposited in the subaccount.

(f) The board may expend the money in the subaccount to make loans to local governing bodies, private businesses, and nonprofit entities within recycling market development zones, or in areas outside zones where partnerships exist with other public entities to assist local jurisdictions to comply with Section 40051.

(g) The board shall establish and collect fees for applications for loans authorized by this section. The application fee shall be set at a level that is sufficient to fund the board's cost of processing applications for loans. In addition, the board shall establish a schedule of fees, or points, for loans which are entered into by the board, to fund the board's administration of the revolving loan program.

(h) The board may expend money in the subaccount for the administration of the Recycling Market Development Revolving Loan Program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act. In addition, the board may expend money in the account to administer the revolving loan program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act. However, funding for the administration of the revolving loan program from the account shall

be provided only if there are not sufficient funds in the subaccount to fully fund the administration of the program.

(i) The board, pursuant to subdivision (a) of Section 47901, may set aside funds for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(j) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 4. Section 42023.2 is added to the Public Resources Code, to read:

42023.2. (a) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer a sum not to exceed five million dollars ($5,000,000) from the account to the subaccount as necessary to meet anticipated loan demand under the program. Those amounts shall be a loan to the subaccount, repayable with interest to the account at the rate of return for money in the Surplus Money Investment Fund.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 5. Section 42023.3 is added to the Public Resources Code, to read:

42023.3. (a) All money remaining in the subaccount on July 1, 2006, and all money received as repayment and interest on loans shall, as of July 1, 2006, be transferred to the account and any money due and outstanding on loans as of July 1, 2006, shall be repaid to the board and deposited by the board in the account until paid in full, except that, upon authorization by the Legislature in the annual Budget Act, interest earnings may be expended for administrative costs associated with the collection of outstanding loan accounts.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2006, and as of January 1, 2007, is

repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 6. Section 42023.4 is added to the Public Resources Code, to read:

42023.4. (a) Loans made pursuant to Section 42023.1 shall be subject to all of the following requirements:

(1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, any recipient of a loan that the board approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at the time of the loan commitment. Except as provided in subdivision (a) of Section 42023.3, all money received as repayment and interest on loans made pursuant to this section shall be deposited in the subaccount.

(2) The term of any loan made pursuant to this section shall be not more than 10 years when collateralized by assets other than real estate, or not more than 15 years when partially or wholly collateralized by real estate.

(3) The board shall approve only those loan applications that demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects which demonstrate that the project will increase market demand for recycling the project's type of postconsumer waste material.

(4) The board shall finance not more than three-fourths of the cost of each project, or not more than two million dollars ($2,000,000) for each project, whichever is less.

(5) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to Section 42023.1 and this section.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 7. Section 42023.5 is added to the Public Resources Code, to read:

42023.5. (a) The board shall, as part of the annual report to the Legislature, pursuant to Section 40507, include, notwithstanding Section 7550.5 of the Government Code, a report on the performance of the Recycling Market Development Revolving Loan Program, including the number and size of loans made, characteristics of loan recipients, projected loan demand, and the cost of administering the program.

(b) This section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 42023.6 is added to the Public Resources Code, to read:

42023.6. (a) The board shall encourage applicants to seek participation from private financial institutions or other public agencies. For purposes of enabling the board and local agencies to comply with Sections 40051 and 41780, the board may participate, in an amount not to exceed five hundred thousand dollars ($500,000), in the Capital Access Loan Program as provided in Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the Health and Safety Code.

(b) For purposes of participating in the Capital Access Loan Program, as specified in subdivision (a), or in any program that leverages subaccount funds, the board may operate both inside and outside the recycling market development zones.

(c) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

CHAPTER 468

An act to amend Sections 16430, 16753, 16754, and 16754.3 of the Government Code, relating to state finance.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 16430 of the Government Code is amended to read:

16430. Eligible securities for the investment of surplus moneys shall be any of the following:

(a) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds or interest-bearing notes on obligations that are guaranteed as to principal and interest by a federal agency of the United States.

(c) Bonds and notes of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.

(d) Bonds or warrants, including, but not limited to, revenue warrants, of any county, city, metropolitan water district, California water district, California water storage district, irrigation district in the state, municipal utility district, or school district of this state.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, in bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act, in stock, bonds, debentures and other obligations of the Federal National Mortgage Association established under the National Housing Act as amended, and in the bonds of any federal home loan bank established under that act, obligations of the Federal Home Loan Mortgage Corporation, in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act as amended, and bonds, notes, and other obligations guaranteed by the Commodity Credit Corporation for the export of California agricultural products under the Commodity Credit Corporation Charter Act as amended.

(f) (1) Commercial paper of "prime" quality as defined by a nationally recognized organization that rates these securities. Eligible paper is further limited to issuing corporations or trusts approved by the Pooled Money Investment Board that meet the conditions in either subparagraph (A) or subparagraph (B):

(A) Both of the following:

(i) Organized and operating within the United States.

(ii) Having total assets in excess of five hundred million dollars ($500,000,000).

(B) Both of the following:

(i) Organized within the United States as a special purpose corporation or trust.

(ii) Having programwide credit enhancements including, but not limited to, overcollateralization, letters of credit, or surety bond.

(2) Purchases of eligible commercial paper may not exceed 180 days' maturity, represent more than 10 percent of the outstanding paper of an issuing corporation or trust, nor exceed 30 percent of the resources of an investment program. At the request of the Pooled Money Investment Board, this investment shall be secured by the issuer by depositing with the Treasurer securities authorized by Section 53651 of a market value at least 10 percent in excess of the amount of the state's investment.

(g) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System.

(h) Negotiable certificates of deposits issued by a federally or state-chartered bank or savings and loan association, a state-licensed branch of a foreign bank, or a federally or state-chartered credit union. For the purposes of this section, negotiable certificates of deposits do not come within the provisions of Chapter 4 (commencing with Section 16500) and Chapter 4.5 (commencing with Section 16600).

(i) The portion of bank loans and obligations guaranteed by the United States Small Business Administration or the United States Farmers Home Administration.

(j) Bank loans and obligations guaranteed by the Export-Import Bank of the United States.

(k) Student loan notes insured under the Guaranteed Student Loan Program established pursuant to the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 and following) and eligible for resale to the Student Loan Marketing Association established pursuant to Section 133 of the Education Amendments of 1972, as amended (20 U.S.C. Sec. 1087-2).

(*l*) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

(m) Bonds, debentures, and notes issued by corporations organized and operating within the United States. Securities eligible for investment under this subdivision shall be within the top three ratings of a nationally recognized rating service.

SEC. 2. Section 16753 of the Government Code is amended to read:

16753. (a) Each bid shall be submitted to the Treasurer in the form and by the means specified by the Treasurer by public announcement.

(b) The Treasurer shall require that each bidder provide a good faith deposit of one-half of 1 percent of the principal amount of the bonds offered for sale. The Treasurer shall specify the form of the deposit, which may be a cashier's check, a surety bond, a wire transfer of funds, or a combination thereof. The deposit shall not bear interest.

SEC. 3. Section 16754 of the Government Code is amended to read:

16754. The bonds specified in the resolution shall be sold by the Treasurer, at the time fixed by the Treasurer, and upon the notice that the Treasurer may deem advisable, or at the time to which the sale shall have been so continued, at public sale to the bidder whose bid will result in the lowest interest cost on account of those bonds, but the Treasurer shall reject any and all bids for the bonds that shall be below the par value thereof plus the interest that shall have accrued thereon from the date thereof (or, if any past due coupon or coupons have been detached from the bonds prior to the delivery thereof, then from the due date of the latest coupon so detached) to the date of the purchaser's payment for the bond. The method of determining the lowest interest cost bid shall be prescribed in the bond resolution and shall be limited to either the net interest cost method or the present worth basis method, also referred to as the true interest cost, bond book basis, and Canadian interest cost method. The net interest cost of each bid shall be determined by ascertaining the total amount of interest that the state would be required to pay under that bid, from the date of the bonds to the respective maturity dates of the bonds then offered for sale, at the coupon rate or rates specified in the bid, less the total amount of the premium, if any, offered by the bid. The bid under which the amount so ascertained is the least shall be deemed to be the bid resulting in the lowest net interest cost. Under the present worth basis method, the bonds shall be awarded to the bidder submitting the lowest interest rate bid determined by doubling the semiannual interest rate, compounded semiannually, necessary to discount the debt service payments to the specified interest computation date and to the price bid. Under either method, the sale shall be for cash, payable upon the delivery of the bonds in definitive form, or if the right to deliver temporary securities has been reserved, then upon the delivery of the temporary securities.

SEC. 4. Section 16754.3 of the Government Code is amended to read:

16754.3. (a) The bonds specified in the resolution shall be sold by the Treasurer, at the time fixed by the Treasurer, and upon the notice that the Treasurer may deem advisable, or at the time to which the sale shall have been so continued, either at public sale to the bidder whose bid will result in the lowest interest cost on account of those bonds or by negotiated sale if the Treasurer determines it will result in a lower interest cost. With respect to bonds sold by the Treasurer by negotiated sales, the Treasurer shall make a finding on the public record as to why a public sale was not used. The Treasurer may sell the bonds at a price below the par value thereof, but the discount on bonds so sold shall not exceed 3 percent of the par value. The interest, if any, accrued to the date of delivery of, and payment for, the bonds shall be added to the sale price of the bonds in any case.

(b) The method of determining the lowest interest cost bid shall be prescribed in the bond resolution and shall be limited to either the net interest cost method or the true interest cost method. The net interest cost of each bid shall be determined by ascertaining the total amount of interest that the state would be required to pay under that bid, from the date of the bonds to the respective maturity dates of the bonds then offered for sale, at the interest rate or rates specified in the bid, less the total amount of the premium, if any, or plus the total amount of the discount, if any, offered by the bid. The bid under which the amount so ascertained is the least shall be deemed to be the bid resulting in the lowest net interest cost. Under the true interest cost method, the bonds shall be awarded to the bidder submitting the lowest interest rate bid determined by the nominal interest rate that, when compounded semiannually and used to discount the debt service payments on the bonds to the date of the bonds, results in an amount equal to the price bid for the bonds, excluding interest accrued to the date of delivery. Under either method, the sale shall be for cash, payable upon the delivery of the bonds in definitive form, or if the right to deliver temporary securities has been reserved, then upon the delivery of the temporary securities.

(c) This section shall apply to any bonds authorized at any statewide election held at any time after the effective date of this section. Section 16754 shall apply only to bonds authorized at elections held before the effective date of this section.

SEC. 5. Section 16754.3 of the Government Code is amended to read:

16754.3. (a) The bonds specified in the resolution shall be sold by the Treasurer, at the time fixed by the Treasurer, and upon the notice that the Treasurer may deem advisable, or at the time to which the sale shall have been so continued, either at public sale to the bidder whose bid will result in the lowest interest cost on account of those bonds or by negotiated sale if the Treasurer determines it will result in a lower interest cost. With respect to bonds sold by the Treasurer by negotiated sales, the Treasurer shall make a finding on the public record as to why a public sale was not used. The Treasurer may sell the bonds at a price below the par value thereof, but the discount on bonds so sold shall not exceed 3 percent of the par value. The interest, if any, accrued to the date of delivery of, and payment for, the bonds shall be added to the sale price of the bonds in any case.

(b) The method of determining the lowest interest cost bid shall be prescribed in the bond resolution and shall be limited to either the net interest cost method or the true interest cost method. The net interest cost of each bid shall be determined by ascertaining the total amount of interest that the state would be required to pay under that bid, from the date of the bonds to the respective maturity dates of the bonds then offered for sale, at the interest rate or rates specified in the bid, less the total amount of the premium, if any, or plus the total

amount of the discount, if any, offered by the bid. The bid under which the amount so ascertained is the least shall be deemed to be the bid resulting in the lowest net interest cost. Under the true interest cost method, the bonds shall be awarded to the bidder submitting the lowest interest rate bid determined by the nominal interest rate that, when compounded semiannually and used to discount the debt service payments on the bonds to the date of the bonds, results in an amount equal to the price bid for the bonds, excluding interest accrued to the date of delivery. Under either method the sale shall be for cash, payable upon the delivery of the bonds in definitive form, or if the right to deliver temporary securities has been reserved, then upon the delivery of the temporary securities.

(c) If the resolution prescribes that the bonds may pay a variable interest rate, as specified in subdivision (d) of Section 16731, the Treasurer may sell the bonds either at public sale, upon sealed bids, or by negotiated sales, as prescribed in subdivision (a).

(d) This section shall apply to any bonds authorized at any statewide election held at any time after the effective date of this section. Section 16754 shall apply only to bonds authorized at elections held before the effective date of this section.

SEC. 6. Section 5 of this bill incorporates amendments to Section 16754.3 of the Government Code proposed by both this bill and SB 997. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 16754.3 of the Government Code, and (3) this bill is enacted after SB 997, in which case Section 4 of this bill shall not become operative.

CHAPTER 469

An act to amend Section 62.9 of the Labor Code, relating to occupational safety and health.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. On or before April 1, 2000, the Occupational Safety and Health Standards Board shall report to the Legislature on the nature and the extent of investigations conducted pursuant to subdivision (b) of Section 143 of the Labor Code.

SEC. 2. Section 62.9 of the Labor Code is amended to read:

62.9. (a) (1) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the

director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993–94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collections process and the cost of reimbursing the Franchise Tax Board for its cost of collection activities pursuant to subdivision (c).

(2) The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars ($250,000) shall be assessed one hundred dollars ($100).

(B) An employer with a payroll of two hundred fifty thousand dollars ($250,000) or more, but not more than five hundred thousand dollars ($500,000), shall be assessed two hundred dollars ($200).

(C) An employer with a payroll of more than five hundred thousand dollars ($500,000), but not more than seven hundred fifty thousand dollars ($750,000), shall be assessed four hundred dollars ($400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars ($750,000), but not more than one million dollars ($1,000,000), shall be assessed six hundred dollars ($600).

(E) An employer with a payroll of more than one million dollars ($1,000,000), but not more than one million five hundred thousand dollars ($1,500,000), shall be assessed eight hundred dollars ($800).

(F) An employer with a payroll of more than one million five hundred thousand dollars ($1,500,000), but not more than two million dollars ($2,000,000), shall be assessed one thousand dollars ($1,000).

(G) An employer with a payroll of more than two million dollars ($2,000,000), but not more than two million five hundred thousand dollars ($2,500,000), shall be assessed one thousand five hundred dollars ($1,500).

(H) An employer with a payroll of more than two million five hundred thousand dollars ($2,500,000), but not more than three million five hundred thousand dollars ($3,500,000), shall be assessed two thousand dollars ($2,000).

(I) An employer with a payroll of more than three million five hundred thousand dollars ($3,500,000) shall be assessed two thousand five hundred dollars ($2,500).

(b) (1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and

private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

(2) The assessment required by this section shall be levied annually, on a calendar year basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation experience modification ratings or equivalent experience modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the organization's records at the time the list is requested, for policies commencing the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The director immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, or object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after the mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first-class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the director shall refer the delinquent assessment and the penalty to the

Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

CHAPTER 470

An act to amend Sections 1300 and 25219 of the Corporations Code, to amend Section 45308.5 of the Government Code, to amend Section 1170.3 of the Harbors and Navigation Code, to amend Sections 1792.2 and 25112.5 of the Health and Safety Code, and to amend Sections 1192.8 and 11521.2 of the Insurance Code, relating to securities.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 1300 of the Corporations Code is amended to read:

1300. (a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201, each shareholder of the corporation entitled to vote on the transaction and each shareholder of a subsidiary corporation in a short-form merger may, by complying with this chapter, require the corporation in which the shareholder holds shares to purchase for cash at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization or short-form merger, excluding any appreciation or depreciation in consequence of the proposed action, but adjusted for any stock split, reverse stock split, or share dividend which becomes effective thereafter.

(b) As used in this chapter, "dissenting shares" means shares which come within all of the following descriptions:

(1) Which were not immediately prior to the reorganization or short-form merger either (A) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100 or (B) listed on the National Market System of the NASDAQ Stock Market, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303 and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; and provided, further, that this provision does not apply to any class of shares described in subparagraph (A) or (B) if demands for payment are filed with respect to 5 percent or more of the outstanding shares of that class.

(2) Which were outstanding on the date for the determination of shareholders entitled to vote on the reorganization and (A) were not voted in favor of the reorganization or, (B) if described in subparagraph (A) or (B) of paragraph (1) (without regard to the provisos in that paragraph), were voted against the reorganization, or which were held of record on the effective date of a short-form merger; provided, however, that subparagraph (A) rather than subparagraph (B) of this paragraph applies in any case where the approval required by Section 1201 is sought by written consent rather than at a meeting.

(3) Which the dissenting shareholder has demanded that the corporation purchase at their fair market value, in accordance with Section 1301.

(4) Which the dissenting shareholder has submitted for endorsement, in accordance with Section 1302.

(c) As used in this chapter, "dissenting shareholder" means the recordholder of dissenting shares and includes a transferee of record.

SEC. 2. Section 25219 of the Corporations Code is amended to read:

25219. Notwithstanding any other provision of this division, if in his or her opinion the public interest and the protection of investors so require, the commissioner is authorized summarily to suspend all over-the-counter trading in this state by broker-dealers and agents in any security or summarily to suspend all trading on a national securities exchange located in this state in any security (provided, in the case of trading on that exchange, that the security is not listed on the National Market System of the NASDAQ Stock Market or any national securities exchange located outside this state on which trading has not been suspended) for a period not exceeding 90 days, and for successive periods of 90 days. No broker-dealer or agent shall effect any transaction (other than an unsolicited brokerage transaction effected on the National Market System of the NASDAQ Stock Market or on a national securities exchange located outside this

state) in, or induce or attempt to induce the purchase or sale of, any security in this state in which trading is in any manner suspended under this section, except in performance of a contract previously entered into.

SEC. 3. Section 45308.5 of the Government Code is amended to read:

45308.5. Notwithstanding Section 45308.1, in addition to any other investments as are authorized by this article, city retirement systems may in their discretion under the advice of proper counsel invest the assets of the retirement fund in an amount, determined on the basis of cost, not to exceed 10 percent of the assets in the first two years after the effective date of this section, not to exceed 15 percent during the third year after the effective date of this section, and not to exceed 25 percent thereafter, in common stock or shares, and not to exceed 2 percent of the assets in the first year after the effective date of this section, not to exceed 3 percent during the second year after the effective date of this section, and not to exceed 5 percent thereafter, in preferred stock or shares, of corporations created or existing under the laws of the United States, or any state, district, or territory thereof; provided that

(a) The stock is registered on a national securities exchange, as provided in the "Securities Exchange Act of 1934" as amended, or is listed on the National Market System of the NASDAQ Stock Market. The registration shall not be required with respect to the following stocks:

(1) The common stock of a bank which is a member of the Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus, and undivided profits, of at least fifty million dollars ($50,000,000);

(2) The common stock of an insurance company which has capital funds, represented by capital, special surplus funds, and unassigned surplus, of at least fifty million dollars ($50,000,000);

(3) Any preferred stock.

(b) The corporation has total assets of at least one hundred million dollars ($100,000,000);

(c) Bonds of that corporation, if any are outstanding, qualify for investment of the retirement fund, and that there are no arrears of dividend payments on its preferred stock;

(d) The corporation has paid a cash dividend on its common stock in at least 8 of the 10 years next preceding the date of investment, and the aggregate net earnings available for dividends on the common stock of the corporation for the whole of that period have been equal to the amount of the dividends paid, and the corporation has paid an earned cash dividend in each of the last three years;

(e) The investment in any one company may not exceed 5 percent of the common shares outstanding; and

(f) No single common stock investment, based on cost, may exceed 2 percent of the assets of the fund.

SEC. 4. Section 1170.3 of the Harbors and Navigation Code is amended to read:

1170.3. (a) The board shall adopt, by regulation, a pilot's conflict-of-interest code which shall include, but not be limited to, a provision specifying that a pilot shall not have any interest in, or derive any income from, any tugboat in operation on the Bays of San Francisco, San Pablo, and Suisun. This requirement of divestiture does not apply to the ownership of barges and vessels similar to barges.

(b) The conflict-of-interest code shall not prohibit the ownership of stock in any corporation registered on a national securities exchange or on the National Market System of the NASDAQ Stock Market, pursuant to Section 78f of Title 15 of the United States Code, which may own tugboats in operation on the Bays of San Francisco, San Pablo, and Suisun.

SEC. 5. Section 1792.2 of the Health and Safety Code is amended to read:

1792.2. (a) Any entity that has executed or assumed continuing care contracts shall maintain reserves covering obligations thereunder.

(b) The following assumptions shall be used when calculating the reserves:

(1) The following life expectancy table shall be used in connection with all continuing care contracts:

Age	Females	Males	Age	Females	Males
55	26.323	23.635	83	7.952	6.269
56	25.526	22.863	84	7.438	5.854
57	24.740	22.101	85	6.956	5.475
58	23.964	21.350	86	6.494	5.124
59	23.199	20.609	87	6.054	4.806
60	22.446	19.880	88	5.613	4.513
61	21.703	19.163	89	5.200	4.236
62	20.972	18.457	90	4.838	3.957
63	20.253	17.764	91	4.501	3.670
64	19.545	17.083	92	4.175	3.388
65	18.849	16.414	93	3.862	3.129
66	18.165	15.759	94	3.579	2.903
67	17.493	15.116	95	3.329	2.705
68	16.832	14.486	96	3.109	2.533
69	16.182	13.869	97	2.914	2.384
70	15.553	13.268	98	2.741	2.254
71	14.965	12.676	99	2.584	2.137
72	14.367	12.073	100	2.433	2.026

73	13.761	11.445	101	2.289	1.919
74	13.189	10.830	102	2.152	1.818
75	12.607	10.243	103	2.022	1.723
76	12.011	9.673	104	1.899	1.637
77	11.394	9.139	105	1.784	1.563
78	10.779	8.641	106	1.679	1.510
79	10.184	8.159	107	1.588	1.500
80	9.620	7.672	108	1.522	1.500
81	9.060	7.188	109	1.500	1.500
82	8.501	6.719	110	1.500	1.500

The life expectancy table set forth in this paragraph shall be used until this section is amended.

(2) For residents over 110 years of age use 1.500 for computing the statutory reserve requirements.

(3) If a continuing care retirement community has contracted with a resident under 55 years of age, provide the department with the methodology used to determine that resident's life expectancy.

(4) A zero interest assumption shall be used to adjust resident life expectancies in conjunction with the computation of the statutory reserve requirement.

(c) The reserves shall be calculated by progressing through each of the following steps:

(1) Compute net cash per capita costs:

(A) Cash operating expenses: Deduct: depreciation and other noncash expenses; processing fees; community services; expenses that will not be incurred in future years; reimbursements for services to nonresidents; donated services, if included as an operating expense on the income statement; investment income; contributions received; and other items that the continuing care retirement community reasonably believes should be deducted with accompanying explanation.

For a continuing care retirement community in its first year of operation or following a major addition to an existing continuing care retirement community, cash operating expenses for calculating reserve requirements may be classified as fixed or variable and totaled separately.

(B) Mean number of residents by level of care: List the number of residents for each level of care separately at the beginning of the fiscal year. Add the number of residents for each level of care separately at the end of the fiscal year. Divide the total for each level of care by two.

(C) Total mean number of residents: Add the total number of residents at the beginning of the fiscal year to the total number of residents at the end of the fiscal year and divide by two. For continuing care retirement communities wherein resident

population fluctuates significantly from month to month and for continuing care retirement communities in their first year of operation, the mean number of residents by level of care or the total mean number may be computed by adding the number of residents at the end of each month in the fiscal year and dividing by the total number of months included. The daily attendance for the fiscal year may also be used to determine the mean number of residents.

(D) Net cash per capita cost: Cash operating expenses divided by the mean number of residents. It is acceptable, but not required, to compute net cash per capita for various levels of care, based on allocated expenses and contributions from consolidated financial statements. Allocation methods shall be subject to the approval of the department, and schedules shall be prepared for all levels of care, including any levels not covered by continuing care contracts. For a continuing care retirement community in its first year of operation or following a major addition to an existing continuing care retirement community, net cash per capita cost for calculating reserve requirements may be the sum of the figures determined by dividing fixed cash operating expenses by the number of residents at the end of the fiscal year, and dividing variable cash operating expenses by the mean number of residents.

(2) Compute projected life cost:

(A) Compute aggregate life expectancies: For each resident, compare age against the life expectancy table and total all life expectancies.

(B) Multiply net cash per capita costs by aggregate life expectancies.

(3) Compute five-year plan residents: Determine the maximum annual total of SSI/SSP payments for the year of entry for each resident. If that amount is greater than the amount of the entrance fee paid by a resident, the resident is designated a "Five-year Plan Resident" and the entrance fee is amortized over five years. No reserves are required for these residents after the fifth year.

(4) Compute projected life revenue:

(A) Annual fee: Multiply by 12 each monthly fee paid by residents, including payments to be made by third-party payers on behalf of the resident, including SSI/SSP and Medi-Cal, and contributions, donations, or endowments, that the provider actually used for operating expenditures for continuing care contracts during the fiscal year.

(B) Continuing care residents requiring full reserves: Enter the number of continuing care residents for each annual fee, excluding five-year plan residents.

(C) Aggregate life expectancies: For each resident, compare age against the life expectancy table and total all life expectancies for each annual fee.

(D) Total projected life revenue: Multiply each annual fee by aggregate life expectancies. Total the products obtained.

(5) Compute statutory reserve:

(A) Reserves not including five-year plan residents: Deduct the projected life revenue from the projected life cost. If the remainder is less than zero, use zero.

(B) Total statutory reserves: Add the total unamortized balance for five-year plan residents to the remainder in paragraph (A) above.

(6) Compute liquid asset portion of statutory reserve: For providers that have executed monthly fee contracts with at least one-half of the residents, compute 5 percent of the total statutory reserves. For providers that have executed prepaid contracts with at least one-half of the residents, compute 25 percent of the total statutory reserves.

(d) At least 25 percent of the statutory reserve shall consist of liquid assets, as defined in paragraph (8) of subdivision (e), except that a 5 percent requirement shall apply to the continuing care retirement communities that have executed monthly fee contracts with at least 50 percent of the residents.

(e) The assets available for reserves shall consist of the following:

(1) Deposits in commercial and savings accounts with California banks that are members of the Federal Deposit Insurance Corporation.

(2) Notes receivable by the continuing care retirement community, that are secured by first deeds of trust and first mortgages on property not owned by the provider or its affiliates.

(3) Stocks, bonds, and securities, at current market value unless otherwise specified, shall meet the following criteria to be approved as assets available for statutory reserves:

(A) Highly liquid money securities, including, but not limited to, United States Treasury Bills, prime banker's acceptances, negotiable time certificates of deposit, and short-term tax-exempt notes.

(B) Common stocks rated "above average" or higher by any national rating agency. For example, a rating of A+, A, or A— by Standard and Poor's Corporation is required for common stock.

(C) Bonds issued by the United States government or federal agencies.

(D) Nonfederal bonds that have a current rating of at least "A" by Moody's Investors Service, Standard and Poor's Corporation, or Fitch Investors Service, and are listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market.

(E) Bonds that are not listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market, but are traded over-the-counter and have a current rating of at least "Aa" by Moody's Investors Service or at least "AA" by Standard and Poor's Corporation or Fitch's Investors Service.

(F) The security interest in the cash surrender value of life insurance policies assigned by residents to the continuing care retirement community.

(4) Stocks, bonds, and securities that do not meet the approval criteria may be retained as part of the reserves with the specific approval of the department. If necessary to meet reserve requirements, stocks, bonds, and securities that are not approved by the department may be disposed of in a gradual manner, to avoid loss to certificate holders.

(5) Real estate used to provide care and housing for holders of continuing care contracts, or real estate, or equities therein, owned by the entity as an investment, the rents from which are used to discharge obligations to holders of continuing care contracts or to reinvest as a part of the reserves. These investments may be located outside the State of California.

(A) The value of this real estate shall be based on 70 percent of the net equity thereof, which shall be the book value, assessed value, or current appraised value within 12 months prior to the end of the fiscal year, less all encumbrances, depreciation, and the amount required for reserves for refundable contracts under Section 1793, all according to audited financial statements acceptable to the department.

(B) All appraisals shall be prepared by either a member of the American Institute of Appraisers or a member of the Society of Real Estate Appraisers, or the county assessor. The department may require technical reports to be verified or certified, or both. The expense of any technical reports or any verifications thereof shall be borne by the provider.

(6) Seventy percent of the net equity in furniture and equipment situated on property used to provide care and housing for holders of continuing care contracts.

(7) Investment certificates or shares in open end investment trusts, that meet all of the following requirements:

(A) The trust management shall have experience either managing another mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), or have been registered as an investment adviser under the Investment Advisors Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.), and in either case shall currently have at least one hundred million dollars ($100,000,000) under its supervision.

(B) Qualified for sale in California.

(C) Has at least 40 percent of its directors or trustees not affiliated with the fund's management company or principal underwriter or any of their affiliates.

(D) Is registered under the Investment Company Act of 1940.

(E) Is a fund listed as qualifying under rules maintained by the Commissioner of Corporations in cooperation with the Department of Insurance.

(8) Liquid assets, if any, shall consist of the following:

(A) Listed bonds, stocks, and commercial and savings accounts.

(B) A sinking fund comprised of liquid assets, if it is a replacement fund subject to disbursement for items, including, but not limited to, payment of principal and interest on the mortgage or for operations during the succeeding year. Replacement funds, that may only be used for capital improvements or repairs, shall not be included in liquid reserves.

(9) Deposits made prior to signing a continuing care contract represent liabilities and shall be offset against liquid assets, if any, otherwise against any other assets.

(10) Deposits that represent funds turned over to the continuing care retirement community by residents for safekeeping without relinquishing control thereof shall be offset against liquid assets, if any, otherwise against other assets.

SEC. 6. Section 25112.5 of the Health and Safety Code is amended to read:

25112.5. "Disclosure statement" means either of the following:

(a) A statement submitted to the department by an applicant, signed by the applicant under penalty of perjury, which includes all of the following information:

(1) The full name, business address, social security number, and driver's license number of all of the following:

(A) The applicant.

(B) Any officers, directors, or partners, if the applicant is a business concern.

(C) All persons or any officers, partners, or any directors if there are no officers, of business concerns holding more than 5 percent of the equity in, or debt liability of the applicant, except that if the debt liability is held by a lending institution, the applicant shall only supply the name and address of the lending institution.

(2) The following persons listed on the disclosure statement shall submit properly completed fingerprint cards:

(A) The sole proprietor.

(B) The partners.

(C) Other persons listed in subparagraph (C) of paragraph (1) and any officers or directors of the applicant company as required by the department.

(3) Fingerprint cards submitted for any person required by paragraph (2) shall only be submitted once. Fingerprint cards shall be completed and submitted for any additional person only if there is a change in the person serving in a position for which fingerprint cards are required to be submitted pursuant to paragraph (2). The department shall use the information required by paragraph (2) to positively identify the applicant.

(4) The full name and business address of any company which generates, transports, treats, stores, recycles, disposes of, or handles hazardous waste and hazardous materials in which the applicant holds at least a 5 percent debt liability or equity interest.

(5) A description of any local, state, or federal licenses, permits, or registrations for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials applied for, or possessed by the applicant, or by the applicant under any previous name or names, in the three years preceding the filing of the statement, or, if the applicant is a business concern, by the officers, directors, or partners of the business concern, including the name and address of the issuing agency.

(6) A listing and explanation of any final administrative orders or license revocations or suspensions issued or initiated by any local, state, or federal authority, in the three years immediately preceding the filing of the statement, or any civil or criminal prosecutions filed in the three years immediately preceding, or pending at the time of, the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or, if the applicant is a business concern, by any officer, director, or partner of the business concern.

(7) A listing of any agencies outside of the state which regulate, or had regulated, the applicant's, or the applicant's under any previous name or names, generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials in the three years preceding the filing of the disclosure statement.

(8) A listing and explanation of any federal or state conviction, judgment, or settlement, in the three years immediately preceding the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or if the applicant is a business concern, by any officer, director, or partner of the business concern.

(9) A listing of all owners, officers, directors, trustees, and partners of the applicant who have owned, or been an officer, director, trustee, or partner of, any company which generated, transported, treated, stored, recycled, disposed of, or handled hazardous wastes or hazardous materials and which was the subject of any of the actions described in paragraphs (6) and (8) for the three years preceding the filing of the statement.

(b) In lieu of the statement specified in subdivision (a), a corporation, the stock of which is listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of that corporation, may submit to the department copies of all periodic reports, including, but not limited to, those reports required by Section 78m of Title 15 of the United States Code and Part 229 (commencing with Section 229.10)

of Chapter II of Title 17 of the Code of Federal Regulations which the corporation or subsidiary has filed with the Securities and Exchange Commission in the three years immediately preceding the submittal, if the corporation or subsidiary thereof has held a hazardous waste facility permit or operated a hazardous waste facility under interim status pursuant to Section 25200 or 25200.5 since January 1, 1984.

SEC. 7. Section 1192.8 of the Insurance Code is amended to read:

1192.8. (a) A domestic life insurer having admitted assets aggregating in value not less than one hundred million dollars ($100,000,000) may make excess fund investments pursuant to this section in interest-bearing notes, bonds, or obligations issued by (1) any operating business trust or limited partnership organized under the laws of any state of the United States, the District of Columbia, the Dominion of Canada, any province of the Dominion of Canada or (2) an authority established pursuant to the California Industrial Development Financing Act, Title 10 (commencing with Section 91500) of the Government Code. The issuer of the notes, bonds, or obligations through itself or its paying agent shall be obligated thereunder to make payments, with respect to the notes, bonds, or other obligations, directly to the insurer or the insurer's nominee.

(b) Except upon the prior written approval of the commissioner, an investment may not be made under the authority of this section unless the note, bond, or obligation is exchange-traded. "Exchange-traded," as used in this subdivision, means listed and traded on the National Market System of the NASDAQ Stock Market or on a securities exchange subject to regulation, supervision, or control under a statute of the United States and acceptable to the commissioner.

(c) Without the prior written consent of the commissioner investment made pursuant to this section shall not exceed in the aggregate 10 percent of the life insurer's policyholder surplus.

(d) A request to the commissioner for (1) approval pursuant to subdivision (b) to invest in notes, bonds, or obligations that are not exchange-traded or (2) consent to exceed the 10 percent limitation set forth in subdivision (c), shall be in writing and shall be accompanied by any supporting data and documentation that the commissioner may require. The commissioner shall require the payment of a five thousand dollar ($5,000) fee in advance for the determination of whether to approve or disapprove each request. Each request shall be in writing and shall be deemed approved unless the commissioner disapproves it within 60 days with respect to requests under subdivision (c) or 20 days with respect to requests under subdivision (b), after the request has been filed in the commissioner's office.

(e) This section shall not be construed to increase or reduce the authority to invest in any operating business trust or limited partnership specifically permitted in other sections of this code.

CHAPTER 471

An act to add Section 69505 to the Education Code, to add Section 17156.5 to the Revenue and Taxation Code, and to amend Section 11008.17 of the Welfare and Institutions Code, relating to reparation payments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 69505 is added to the Education Code, to read:

69505. (a) To the extent that federal financial analysis methodology incorporates this exemption, income received as reparation payments paid pursuant to federal law on or after October 1, 1990, for the purpose of redressing the injustice done to United States citizens and resident aliens of Japanese ancestry who were interned during World War II shall not be considered in determining an applicant's financial need.

(b) To the extent that federal financial analysis methodology incorporates this exemption, income received as reparation payments paid by the Canadian government for the purpose of redressing the injustice done to persons of Japanese ancestry who were interned in Canada during World War II shall not be considered in determining an applicant's financial need.

SEC. 2. Section 17156.5 is added to the Revenue and Taxation Code, to read:

17156.5. Gross income does not include any amount received as reparation payments paid by the Canadian government for the purpose of redressing the injustice done to persons of Japanese ancestry who were interned in Canada during World War II.

SEC. 3. Section 11008.17 of the Welfare and Institutions Code is amended to read:

11008.17. (a) To the extent required by federal law, amounts paid pursuant to any federal law enacted in 1988 to provide reparation payments to redress the injustice done to United States citizens and resident aliens of Japanese ancestry who were interned during World War II shall not be considered as income or resources for purposes of determining eligibility to receive Medi-Cal benefits or public assistance benefits or the amount of those benefits.

(b) To the extent that federal financial participation is available, amounts paid by the Canadian government to provide reparation payments to redress the injustice done to persons of Japanese ancestry who were interned in Canada during World War II shall not be considered as income or resources for purposes of determining eligibility to receive Medi-Cal benefits or public assistance benefits or the amount of those benefits.

(c) To the extent that federal financial participation is available, where the reparation payments described in subdivisions (a) and (b) have been converted to another form, amounts of otherwise excess nonexempt resources equal to the amount of these reparation payments received by the individual or inherited by the spouse of the individual, or both, shall not be considered as resources in determining eligibility for Medi-Cal.

(d) To the extent that federal financial participation is available, reparation payments described in subdivisions (a) and (b), or where the reparation payments described in subdivisions (a) and (b) have been converted to another form, amounts of resources equal to the amount of these reparation payments, received by the deceased Medi-Cal beneficiary or inherited by the deceased spouse of that beneficiary, or both, shall be exempt from estate recovery by the State Department of Health Services pursuant to Section 14009.5.

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.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that recipients of reparation payments may fully benefit from the provisions of this act as soon as possible and so redress an unfairness at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 472

An act relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. (a) Notwithstanding Section 7550.5 of the Government Code, the Secretary of Veterans Affairs shall conduct a study of the life and disability insurance coverage that is being provided for the purchasers of farms and homes under the Veterans' Farm and Home Purchase Act of 1974 (Article 3.1 (commencing with Section 987.50), Chapter 6, Division 4, Military and Veterans Code).

(b) The study shall include, but not be limited to, a determination as to what other life and disability insurance is available that would provide equal or better coverage and a more equitable or lower cost to the purchasers for the purposes described in subdivision (a). The study shall be conducted using existing resources of the Department of Veterans Affairs.

(c) Copies of the study shall be submitted to the Senate Committee on Veterans Affairs and the Assembly Committee on Veterans Affairs on or before January 1, 2000.

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 modify existing law for the effective administration of the Veterans' Farm and Home Purchase Act of 1974 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 473

An act to amend Sections 50780, 50781, 50783, 50784, 50785, 50786, and 50786.5 of the Health and Safety Code, relating to mobilehome parks, and making an appropriation therefor.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 50780 of the Health and Safety Code is amended to read:

50780. (a) The Legislature finds and declares as follows:

(1) That manufactured housing and mobilehome parks provide a significant source of homeownership for California residents, but increasing costs of mobilehome park development and construction, combined with the costs of manufactured housing, the costs of financing and operating these parks, the low vacancy rates, and the pressures to convert mobilehome parks to other uses increasingly render mobilehome park living unaffordable, particularly to those residents most in need of affordable housing.

(2) That state government can play an important role in addressing the problems confronted by mobilehome park residents by providing supplemental financing that makes it possible for mobilehome park residents to acquire the mobilehome parks in which they reside and convert them to resident ownership.

(3) That a significant number of older mobilehome parks exist in California, the residents of which may collectively lack the experience or other qualifications necessary to successfully own and operate their parks; that these parks provide low-cost housing for their residents that would be difficult to replace if the parks were converted to other uses; that these parks are more likely than other parks to be threatened by physical deterioration or conversion to other uses; and that it is, therefore, appropriate to use the resources of the fund pursuant to this chapter to transfer these parks to ownership by qualified nonprofit housing sponsors or by local public entities for the purpose of preserving them as affordable housing.

(b) Therefore, it is the intent of the Legislature, in enacting this chapter, to encourage and facilitate the conversion of mobilehome parks to resident ownership or ownership by qualified nonprofit housing sponsors or by local public entities, to protect low-income mobilehome park residents from both physical and economic displacement, to obtain a high level of private and other public financing for mobilehome park conversions, and to help establish acceptance for resident-owned, nonprofit-owned, and government-owned mobilehome parks in the private market.

SEC. 2. Section 50781 of the Health and Safety Code is amended to read:

50781. Unless the context otherwise requires, the following definitions given in this section shall control construction of this chapter:

(a) "Affordable" means that, where feasible, low-income residents should not pay more than 30 percent of their monthly income for housing costs.

(b) "Conversion costs" includes the cost of acquiring the mobilehome park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a governmental agency or lender for the project.

(c) "Department" means the Department of Housing and Community Development.

(d) "Fund" means the Mobilehome Park Purchase Fund created pursuant to Section 50782.

(e) "Housing costs" means the total cost of owning, occupying, and maintaining a mobilehome and a lot or space in a mobilehome park. The department's regulations shall specify the factors included in these costs and may, for the purposes of calculating affordability, establish reasonable allowances.

(f) "Individual interest in a mobilehome park" means any interest that is fee ownership or a lesser interest that entitles the holder to occupy a lot or space in a mobilehome park for a period of not less than either 15 years or the life of the holder. Individual interests in a mobilehome park include, but are not limited to, the following:

(1) Ownership of a lot or space in a mobilehome park or subdivision.

(2) A membership or shares in a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a limited equity housing cooperative, as defined in Section 33007.5 of this code.

(3) Membership in a nonprofit mutual benefit corporation that owns, operates, or owns and operates the mobilehome park.

(g) "Low-income resident" means an individual or household that is a lower income household, as defined in Section 50079.5. However, personal assets shall not be considered in the calculation of income, except to the extent that they actually generate income.

(h) "Low-income spaces" means those spaces in a mobilehome park operated by a resident organization, a qualified nonprofit housing sponsor, or a local public entity that are occupied by low-income residents.

(i) "Mobilehome park" means a mobilehome park, as defined in Section 18214, or a manufactured home subdivision created by the conversion of a mobilehome park, as defined in Section 18214, including a senior park, to resident ownership or ownership by a qualified nonprofit housing sponsor or local public entity.

(j) "Program" means the Mobilehome Park Resident Ownership Program.

(k) "Qualified nonprofit housing sponsor" means a nonprofit public benefit corporation, as defined in Part 2 (commencing with Section 5110) of Division 2 of the Corporations Code, that (1) has received its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, (2) is not affiliated with or controlled by a for-profit organization or individual, (3) has extensive experience with the development and operation of publicly subsidized affordable housing, (4) the department determines is qualified by experience and capability to own and operate a mobilehome park that provides housing affordable to low-income households, and (5) has formal arrangements for ensuring resident participation or input in the management of the park that may include, but not be limited to, membership on the board of directors.

(*l*) "Resident organization" means a group of mobilehome park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobilehome park in which they reside and converting the mobilehome park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobilehome park, or in each park of a combination of parks where the residents of two or more parks

combine to form a single resident organization. The two-thirds of households in the resident organization at the time of funding the park need not be the same households that were residing in the park when the application for assistance was submitted to the department. A household's membership in the resident organization when the application was submitted to the department shall not be a requirement for that household to receive a loan or assistance under this chapter.

(m) "Resident ownership" means, depending on the context, either the ownership by a resident organization of an interest in a mobilehome park that entitles the resident organization to control the operations of the mobilehome park for a term of no less than 15 years, or the ownership of individual interests in a mobilehome park, or both.

SEC. 3. Section 50783 of the Health and Safety Code is amended to read:

50783. (a) The department may make loans from the fund to resident organizations for the purpose of financing mobilehome park conversion costs.

(b) Loans provided pursuant to this section shall be for a term of no more than three years and shall bear interest at a rate of 3 percent per annum.

(c) Loans provided pursuant to this section shall be for the minimum amount necessary to enable a resident organization to acquire and convert the mobilehome park. To the extent possible, the loan amount shall not exceed 50 percent of the approved conversion costs. However, the loan amount may be for up to 95 percent of the approved conversion costs attributable to the low-income households in the park when approved by the department.

(d) The department may grant approval to exceed 50 percent of the approved conversion costs only where both of the following are demonstrated:

(1) That the applicant has made an effort to secure additional funds from other sources and these funds are not available.

(2) That the project would not be feasible, as determined by the department, without a waiver of the 50 percent financing limitation.

(e) The total secured debt in a superior position to the department's loan plus the department's loan shall not exceed the value of the collateral securing the loan.

SEC. 4. Section 50784 of the Health and Safety Code is amended to read:

50784. (a) The department may make loans from the fund to (1) individual low-income residents of mobilehome parks that have converted to resident ownership, (2) resident organizations that have converted or plan to convert a mobilehome park to resident ownership, or (3) qualified nonprofit housing sponsors or local public entities that plan to acquire a mobilehome park, provided that no less

than 30 percent of the spaces in the park are for occupancy by manufactured homes owned by low-income residents. The purpose of providing loans pursuant to this section is to reduce the monthly housing costs for low-income residents to an affordable level.

(b) (1) Any mobilehome park purchased by a local public entity with a loan pursuant to this section shall be transferred to a nonprofit housing sponsor or resident organization that has converted, or plans to convert, the park to resident ownership no later than three years from the date of loan closing, with all obligations under the loan assumed by the nonprofit organization or resident organization.

(2) If a local public entity has made a good faith effort, but has not been able, to transfer the park by the end of the three-year period, the entity may apply to the department for an additional three-year extension. Upon a determination by the department that the local public entity has made a good faith effort to transfer the park in accordance with paragraph (1), it shall have an additional three years from the expiration date of the first three-year period to consummate the transfer. The three-year extension shall only be granted once by the department for each loan to a local public entity.

(3) Where a local public entity fails to make a good faith effort to transfer the park within the first three-year period, as determined by the department, or fails to transfer the park by the expiration date of the extended three-year period, it shall repay the loan in full to the department.

(c) Loans provided pursuant to this section shall be for a term of no more than 30 years and shall bear interest at a rate of 3 percent per annum.

(d) The department may establish flexible repayment terms for loans provided pursuant to this section if the terms are necessary to reduce the monthly housing costs for low-income residents to an affordable level, and do not represent an unacceptable risk to the security of the fund. Flexible repayment terms may include, but are not limited to, graduated payment schedules with negative amortization.

(e) Loans provided to low-income residents pursuant to this section shall be for the minimum amount necessary to reduce the borrower's monthly housing costs to an affordable level. All of the following shall apply to loans to finance individual interests pursuant to this section:

(1) To the extent possible, loan amounts shall not exceed 50 percent of the acquisition costs of the individual interests in the mobilehome parks. However, the loan amounts may be for up to 95 percent of the acquisition costs of the individual interests in the mobilehome parks when approved by the department.

(2) The department may grant approval to exceed 50 percent of the acquisition costs of the individual interests only where both of the following are demonstrated:

(A) That the low-income resident has made an effort to secure additional funding from other sources and these funds are not available.

(B) That the low-income resident would be unable to purchase an individual interest without a waiver of the 50 percent financing limitation.

(3) The total indebtedness of the loan provided pursuant to this section plus any senior debt upon individual interests may not exceed 95 percent of the value of the collateral securing the loan.

(f) Loans provided to resident organizations, qualified nonprofit housing sponsors, or local public entities pursuant to this section shall be for the minimum amount necessary to reduce the monthly housing costs of low-income residents to an affordable level. All of the following shall apply to loans made to resident organizations, qualified nonprofit housing sponsors, or local public entities pursuant to this section:

(1) To the extent possible, loan amounts shall not exceed 50 percent of the conversion costs attributable to the low-income spaces. However, the loan amounts may be for up to 95 percent of the conversion costs attributable to the low-income spaces when approved by the department.

(2) The department may grant approval to exceed 50 percent of the conversion costs attributable to low-income spaces only where both of the following are demonstrated:

(A) That the applicant has made an effort to secure additional funds from other sources and these funds are not available.

(B) That the project would not be feasible as determined by the department without a waiver of the 50 percent financing limitation.

(3) The total secured debt in a superior position to the department's loan plus the department's loan shall not exceed the value of the collateral securing the loan.

(g) Funds provided pursuant to this section shall not be used to (1) assist residents who are not of low income, (2) reduce monthly housing costs for low-income residents to less than 30 percent of their monthly income, or (3) facilitate the purchase of a park by a qualified nonprofit corporation or local public entity from a public entity that had acquired the park prior to the commitment of the loan from the program.

(h) Subject to the restrictions of this subdivision, funds provided pursuant to this section may be used to finance the costs of relocating a mobilehome park to a more suitable site within the same jurisdiction if the department determines that the cost of the relocation, including any and all relocation costs to the affected households, is a more prudent expenditure of funds than the costs of needed or repetitive repairs to the existing park. Funds provided pursuant to this section shall not be used to relieve a park owner of any responsibility for covering the costs of mitigating the impacts of

a park closure as may be provided for by local ordinance or pursuant to Section 65863.7 or 66427.4 of the Government Code.

SEC. 5. Section 50785 of the Health and Safety Code is amended to read:

50785. (a) In determining the eligibility for and amount of loans pursuant to Sections 50783 and 50784, the department shall take into consideration, among other factors, all of the following:

(1) The reasonableness of the conversion costs relating to repairs, rehabilitation, construction, or other costs.

(2) Any administrative and security factors affecting the department's program operation and administration.

(3) Whether or not the projects complement the implementation of a local housing program to preserve or increase the supply of housing for persons and families of low or moderate income.

(4) Whether or not state funds are utilized in the most efficient and effective manner.

(5) In the case of a loan to a qualified nonprofit housing sponsor or to a local public entity, evidence of resident participation in the conversion and management of the park, in the form of either resident participation on the board of directors of the entity that acquires ownership of the park, or the establishment of, and consultation with, a permanent resident advisory board.

(b) To the extent consistent with requests for assistance, the department shall allocate funds available for the purposes of this chapter throughout the state in accordance with identified housing needs, including seeking to allocate not less than 20 percent to rural areas.

SEC. 6. Section 50786 of the Health and Safety Code is amended to read:

50786. (a) The department shall adopt regulations for the administration and implementation of this chapter.

(b) The department shall obtain the best available security for loans made pursuant to this chapter. The security may include a note, deed of trust, assignment of lease, or other form of security on real or personal property which the department determines is adequate to protect the interests of the state. To the extent applicable, these documents and any regulatory provisions shall be recorded or referenced in a recorded document in the office of the county recorder of the county in which the mobilehome park is located.

(c) The degree of continuing regulatory control with respect to park operations and resident loans exercised by the department in making loans pursuant to this chapter shall be commensurate with the level of financial assistance provided and in all cases shall be adequate to protect the state's security interest and ensure the accomplishment of the purposes of the program authorized by this chapter. The regulatory requirements shall be set forth in a regulatory agreement, deed of trust, or other lien, and any violation of these requirements shall be considered a violation of a security

document. Where loans are made to a qualifying nonprofit housing sponsor or local public entity, a regulatory agreement shall be recorded against the mobilehome park. This regulatory agreement shall contain provisions limiting occupancy, rents, and park operation for the original loan term. The department may release individual spaces from the regulatory agreement only if they are purchased by low-income residents who occupy them.

(d) Before providing financing pursuant to this chapter, the department shall require provision of, and approve, at least all of the following:

(1) Verification at the time of application and prior to funding that at least two-thirds of the households residing in the mobilehome park support the plans for acquisition and conversion of the park.

(2) Verification that either no park residents shall be involuntarily displaced as a result of the park conversion or the impacts of the displacement shall be mitigated as required under state and local law. For purposes of this requirement, compliance with Section 66427.5 of the Government Code shall be conclusively presumed to have mitigated economic displacement.

(3) Verification that the conversion is consistent with local zoning and land use requirements, other applicable state and local laws, and regulations and ordinances.

(4) Projected costs and sources of funds for all conversion activities.

(5) Projected operating budget for the park during and after the conversion.

(6) A management plan for the conversion and operation of the park.

(7) If necessary, a relocation plan for residents not participating that is in compliance with Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

(e) The department shall, to the greatest extent feasible, do all of the following:

(1) Require participation by cities and counties in loan applications submitted pursuant to this chapter.

(2) Contract with private lenders or local public entities to provide program administration and to service loans made pursuant to this chapter.

(3) Give priority to applications for resident-owned parks.

SEC. 7. Section 50786.5 of the Health and Safety Code is amended to read:

50786.5. Notwithstanding any other provision of this chapter, where a city, county, or other local governmental entity has acquired a mobilehome park for the purpose of converting the park to resident ownership, and the department has entered into a binding agreement for the commitment of funds to the project, the department shall not require that more than a simple majority of households residing in the park actually purchase, or have opened

escrow to purchase, interests or spaces in the park as a condition of disbursement of funds for loans made pursuant to Section 50784 to qualified individual households.

CHAPTER 474

An act to amend Sections 20303, 20894, and 21754 of, and to add Sections 20225.5 and 20815.5 to, the Government Code, relating to public employees' retirement.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 20225.5 is added to the Government Code, to read:

20225.5. (a) Notwithstanding Sections 20616, 20618, and 20815, the board may create separate risk pools for local and school miscellaneous, local safety, and school safety members. Should a contracting agency or school district choose to participate in a risk pool, the assets and liabilities with respect to the affected member classification shall be combined with those of the pool.

(b) Within six months after the effective date of any new option available to contracting agencies or school districts, the board shall (1) notify all contracting agencies and school districts participating in a risk pool created under subdivision (a) of the availability and approximate cost of the new option, (2) include the new option in at least one of the risk pools applicable to each member category to which the new option may apply and previously created under subdivision (a), and (3) notify the contracting agencies and school districts of their options if they are participating in a risk pool to which the new option is added and choose not to offer the new option to their employees.

(c) This section shall not apply to any contracting agency or school district nor to the employees of any contracting agency or school district until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contract made after this section takes effect, by express provision in the contract making the contracting agency subject to this section.

SEC. 2. Section 20303 of the Government Code is amended to read:

20303. (a) Persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or any political

subdivision thereof and who are receiving credit in the other system for service are, as to that service, excluded from this system.

(b) (1) For the purpose of this section only, persons who are receiving pensions, retirement allowances, or other payments, from any source whatever, on account of service rendered to an employer other than the state and while they were not in state service, are not, because of that receipt, members of any other retirement or pension system.

(2) For the purposes of this section only, persons who participate in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6 of Division 5 of Title 2 or established pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, are not, because of that participation, members of any other retirement or pension system.

(3) For the purposes of this section only, persons who participate in a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code are not, because of that participation, members of any other retirement or pension system, so long as the contracting agency has received a ruling from the Internal Revenue Service stating that the money purchase pension plan and trust qualifies under Section 401(a) and furnishes proof thereof upon request by the board.

(4) For the purposes of this section only, persons who participate in a supplemental defined benefit plan maintained by their employer that meets the requirements of Section 401(a) of Title 26 of the United States Code are not, because of that participation, members of another retirement or pension system, provided that all of the following conditions exist:

(A) The defined benefit plan provided under this part has been designated as the employer's primary plan for the person.

(B) The supplemental defined benefit plan has received a ruling from the Internal Revenue Service stating that the plan qualifies under Section 401(a) of Title 26 of the United States Code, and has furnished proof thereof to the employer and, upon request, to the board.

(C) The person's participation in the supplemental defined benefit plan does not, in any way, interfere with the person's rights to membership in the defined benefit plan, or any benefit provided, under this part.

SEC. 3. Section 20815.5 is added to the Government Code, to read:

20815.5. Notwithstanding Sections 20618 and 20815, the assets and liabilities of contracting agencies and school districts electing to be subject to Section 20225.5 shall be combined for purposes of setting employer contributions for public agencies participating in the same risk pool.

SEC. 4. Section 20894 of the Government Code is amended to read:

20894. (a) A person shall not receive credit for the same service in two retirement systems supported wholly or in part by public funds under any circumstance.

(b) Nothing in this section shall preclude concurrent participation and credit for service in a public retirement system and in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6 or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, a tax-deferred retirement plan that meets the requirements of Section 40l(k) of Title 26 of the United States Code, or a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(c) Nothing in this section shall preclude concurrent participation and credit for service in the defined benefit plan provided under this part and in a supplemental defined benefit plan maintained by the employer that meets the requirements of Section 401(a) of Title 26 of the United States Code, provided all of the following conditions exist:

(1) The defined benefit plan provided under this part has been designated as the employer's primary plan for the person.

(2) The supplemental defined benefit plan has received a ruling from the Internal Revenue Service stating that the plan qualifies under Section 401(a) of Title 26 of the United States Code, and has furnished proof thereof to the employer and, upon request, to the board.

(3) The person's participation in the supplemental defined benefit plan does not, in any way, interfere with the person's rights to membership in the defined benefit plan, or any benefit provided, under this part.

SEC. 5. Section 21754 of the Government Code is amended to read:

21754. In addition to the benefit limitations specified in this part, if a member participates in other defined benefit plans maintained by the employer, to the extent the aggregation of benefits payable under those plans and pursuant to Part 3 (commencing with Section 20000) are subject to and exceed the limits prescribed by Section 415 of Title 26 of the United States Code, the benefits payable pursuant to the other defined benefit plans maintained by the employer shall be reduced, but not below zero, to the extent necessary to satisfy Section 415, before adjustments to the benefits provided under Part 3 are made. Nothing in this section shall limit a member's entitlement to replacement benefits as provided by Section 21757.

CHAPTER 475

An act to amend Section 76104.5 of the Government Code, and to amend Sections 290.7, 296, 297, 299.5, 299.6, 3060.5, and 11170 of the Penal Code, relating to DNA and forensic identification.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 76104.5 of the Government Code is amended to read:

76104.5. (a) For the purpose of assisting any county in the establishment of automated photographic or DNA (genetic fingerprint) identification systems, or any new technology in the county, the board of supervisors may establish in the county treasury a DNA Identification Fund into which shall be deposited the amounts specified in the resolutions adopted by the board of supervisors as authorized in accordance with this title, up to fifty cents ($0.50) for every seven dollars ($7) collected pursuant to Section 76000. The moneys of the fund shall be payable only for the purchase, lease, operation, including personnel and related costs, and maintenance of automated photographic or DNA (genetic fingerprint) identification systems, or any new technology.

(b) The fund moneys described in subdivision (a), together with any interest earned thereon, shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. Deposits to the fund may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of the projects specified herein.

(c) For purposes of this section, "DNA (genetic fingerprint) identification system" means equipment, procedures, and methodologies compatible with and meeting the standards set for DNA testing by the Department of Justice pursuant to the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1 of the Penal Code).

SEC. 2. Section 290.7 of the Penal Code is amended to read:

290.7. The Department of Corrections shall provide samples of blood and saliva taken from a prison inmate pursuant to the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1 of the Penal Code) to the county in which the inmate is to be released if the county maintains a local DNA testing laboratory.

SEC. 3. Section 296 of the Penal Code is amended to read:

296. (a) (1) Any person who is convicted of, or pleads guilty or no contest to, any of the following crimes, or is found not guilty by reason of insanity of any of the following crimes, shall, regardless of sentence imposed or disposition rendered, be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand for law enforcement identification analysis:

(A) Any offense or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder in violation of Section 187, 190, 190.05, or any degree of murder as set forth in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code, or any attempt to commit murder.

(C) Voluntary manslaughter in violation of Section 192 or an attempt to commit voluntary manslaughter.

(D) Felony spousal abuse in violation of Section 273.5.

(E) Aggravated sexual assault of a child in violation of Section 269.

(F) A felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5.

(G) Kidnapping in violation of subdivisions (a) to (e), inclusive, of Section 207, or Section 208, 209, 209.5, or 210, or an attempt to commit any of these offenses.

(H) Mayhem in violation of Section 203 or aggravated mayhem in violation of Section 205, or an attempt to commit either of these offenses.

(I) Torture in violation of Section 206 or an attempt to commit torture.

(2) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, and who is committed to any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is or was committed to a state hospital as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing.

(b) The provisions of this chapter and its requirements for submission to testing as soon as administratively practicable to provide specimens, samples, and print impressions as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility,

and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(c) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and data base specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, to any of the offenses described in subdivision (a).

(d) At sentencing or disposition, the prosecuting attorney shall verify in writing that the requisite samples are required by law, and that they have been taken, or are scheduled to be taken before the offender is released on probation, or other scheduled release. However, a failure by the prosecuting attorney or any other law enforcement agency to verify sample requirement or collection shall not relieve a person of the requirement to provide samples.

(e) The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter. However, failure by the court to enter these facts in the abstract of judgment shall not invalidate a plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 4. Section 297 of the Penal Code is amended to read:

297. (a) The laboratories of the Department of Justice that are accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB) or any certifying body approved by the ASCLD/LAB, and any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB, are authorized to analyze crime scene samples and other samples of known and unknown origin and to compare and check the forensic identification profiles, including DNA profiles, of these samples against available DNA and forensic identification data banks and data bases in order to establish identity and origin of samples for identification purposes.

(b) A biological sample obtained from a suspect in a criminal investigation for the commission of any crime may be analyzed for

forensic identification profiles, including DNA profiles, by the DNA Laboratory of the Department of Justice, which is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB, or any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB. Samples obtained from a suspect shall only be compared to samples taken from the criminal investigation for which he or she is a suspect and for which the sample was originally taken either by court order or voluntarily.

(c) All laboratories, including the Department of Justice DNA laboratories, contributing DNA profiles for inclusion in California's DNA Data Bank shall be accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB. Additionally, each laboratory shall submit to the Department of Justice for review the annual report required by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB which documents the laboratory's adherence to ASCLD/LAB standards or the standards of any certifying body approved by the ASCLD/LAB. The requirements of this subdivision apply to California laboratories only and do not preclude DNA profiles developed in California from being searched in the National DNA Data Base (CODIS).

(d) Nothing in this section precludes laboratories meeting Technical Working Group on DNA Analysis Methods (TWGDAM) or Scientific Working Group on DNA Analysis Methods (SWGDAM) guidelines or standards promulgated by the DNA Advisory Board as established pursuant to Section 14131 of Title 42 of the United States Code, from performing forensic identification analyses, including DNA profiling, independent of the Department of Justice DNA and Forensic Identification Data Base and Data Bank program.

(e) The limitation on the types of offenses set forth in subdivision (a) of Section 296 as subject to the collection and testing procedures of this chapter is for the purpose of facilitating the administration of this chapter. The detention, arrest, wardship, or conviction of a person based upon a data bank match or data base information is not invalidated if it is later determined that the specimens, samples, or print impressions were obtained or placed in a data bank or data base by mistake.

SEC. 5. Section 299.5 of the Penal Code is amended to read:

299.5. (a) All DNA and forensic identification profiles retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential except as otherwise provided in this chapter.

(b) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in other computerized data bank systems maintained by the Department of Justice.

(c) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall

not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(d) The fact that the blood specimens, saliva samples, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall be included in the state summary criminal history information.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(e) DNA and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, and district attorneys' offices, at the request of the agency, except as specified in this section. Dissemination of this information to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this section. This information shall be available to defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(f) Any person who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, or for other than identification purposes or purposes of parole or probation supervision, is guilty of a misdemeanor.

(g) Furnishing DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(h) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized data bank system, any of the DNA laboratory's data bases, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law. All requests for statistical or research information obtained from the DNA data bank shall be cataloged by the Department of Justice. Commencing January 1, 2000, the department shall submit an annual letter to the Legislature including, with respect to each request, the requester's name or agency, the purpose of the request, whether the request is related to a criminal investigation or court proceeding,

whether the request was granted or denied, any reasons for denial, costs incurred or estimates of the cost of the request, and the date of the request.

(i) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology. This material shall be available to criminal defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(j) In order to maintain the computer system security of the Department of Justice DNA and forensic identification data base and data bank program, the computer software and data base structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

(k) Nothing in this section shall preclude a court from ordering discovery pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

SEC. 6. Section 299.6 of the Penal Code is amended to read:

299.6. (a) Nothing in this chapter shall prohibit the sharing or disseminating of population data base or data bank information with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with statistical analyses of the population data base or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.

(b) Nothing in this chapter shall prohibit the sharing or disseminating of protocol and forensic DNA analysis methods and quality control procedures with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with analyses of forensic protocol, research methods, or quality control procedures.

(c) The population data base and data bank of the DNA Laboratory of the Department of Justice may be made available to

and searched by the FBI and any other agency participating in the FBI's CODIS System or any other national law enforcement data bank system.

(d) The Department of Justice may provide portions of the blood specimens and saliva samples collected pursuant to this chapter to local public DNA laboratories for identification purposes provided that the privacy provisions of this section are followed by the local laboratory and if each of the following conditions is met:

(1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the Department of Justice pursuant to Sections 297, 298, and 299.5.

(2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those established by the Department of Justice pursuant to subdivision (i) of Section 299.5, or otherwise are determined by the Department of Justice to be valid and appropriate for identification purposes.

(3) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(4) All provisions of this section concerning privacy and security are followed.

(5) The local public DNA laboratory assumes all costs of securing the specimens and samples and provides appropriate tubes, labels, and instructions necessary to secure the samples.

(e) Any local public DNA laboratory that produces DNA profiles of known reference samples for inclusion within the permanent files of the state's DNA Data Bank program shall comply with and be subject to all of the rules, regulations, and restrictions of this chapter and shall follow the policies of the DNA Laboratory of the Department of Justice.

SEC. 7. Section 3060.5 of the Penal Code is amended to read:

3060.5. Notwithstanding any other provision of law, the parole authority shall revoke the parole of any prisoner who refuses to sign a parole agreement setting forth the general and any special conditions applicable to the parole, refuses to sign any form required by the Department of Justice stating that the duty of the prisoner to register under Section 290 has been explained to the prisoner, unless the duty to register has not been explained to the prisoner, or refuses to provide samples of blood or saliva as required by the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and shall order the prisoner returned to prison. Confinement pursuant to any single revocation of parole under this section shall not, absent a new conviction and commitment to prison under other provisions of law, exceed six months, except as provided in subdivision (c) of Section 3057.

SEC. 8. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

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

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

(3) The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having

supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(4) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(5) The department shall make available to child protective agencies, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the child protective agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(6) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or a child protective agency or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

(B) If Child Abuse Central Index information is requested by a child protective agency for the temporary placement of a child in an

emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

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

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any child protective agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning

child abuse reports contained in the index from the Department of Justice pursuant to this subdivision, the child protective agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by a child protective agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to Section 11169 to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse only when an agency makes the request for information in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(e) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (a) of Section 11167.5.

(f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 476

An act to add Section 35021.2 of the Education Code, relating to school volunteers.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 35021.2 is added to the Education Code, to read:

35021.2. (a) When a school district or county office of education pursuant to Section 11105.3 of the Penal Code requests from the Department of Justice records involving criminal offenses committed by a prospective volunteer, the school district or county office of education may request that the Department of Justice provide subsequent arrest notification service pursuant to Section 11105.2 of the Penal Code. The Department of Justice shall comply with a request made pursuant to this section.

(b) This section also applies to a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level that requests, pursuant to Section 11105.3 of the Penal Code, records involving criminal offenses committed by a prospective volunteer.

CHAPTER 477

An act to amend Section 40451 of, and to add Sections 39047.2, 40451.5, and 40471 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 23, 1999. Filed with Secretary of State September 23, 1999.]

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

SECTION 1. Section 39047.2 is added to the Health and Safety Code, to read:

39047.2. "PM2.5" means particulate matter 2.5 microns and smaller in size.

SEC. 2. Section 40451 of the Health and Safety Code is amended to read:

40451. (a) The south coast district shall use the Pollutant Standards Index developed by the United States Environmental Protection Agency and shall report and forecast pollutant levels daily for dissemination in the print and electronic media. Commencing July 1, 2001, the south coast district shall also include in its report and forecast levels of PM2.5 in excess of the 24-hour federal ambient air standard, as adopted in July 1997, or any standard adopted by the United States Environmental Protection Agency that succeeds that standard.

(b) Using existing communication facilities available to it, the south coast district shall notify all schools in the South Coast Air Basin whenever any federal primary ambient air quality standard is predicted to be exceeded. Commencing July 1, 2001, using communication facilities available to it, the south coast district shall also notify all schools in the South Coast Air Basin when the ambient level of PM2.5 is predicted to exceed the 24-hour federal ambient air standard, as adopted in July 1997, or any standard adopted by the United States Environmental Protection Agency that succeeds that standard.

(c) Whenever it becomes available, the south coast district shall disseminate to schools, amateur adult and youth athletic organizations, and all public agencies operating parks and recreational facilities in the south coast district the latest scientific information and evidence regarding the need to restrict exercise and other outdoor activities during periods when federal primary air quality standards and the 24-hour federal ambient air standard for PM2.5, as adopted in July 1997, or any standards adopted by the United States Environmental Protection Agency that succeed those standards, are exceeded.

(d) Once every two months and annually, the south coast district shall report on the number of days and locations that federal and state

ambient air quality standards were exceeded. Commencing July 1, 2001, the south coast district shall also include in that report the number of days and locations on and at which the 24-hour federal ambient air standard for PM2.5, as adopted in July 1997, or any standard adopted by the United States Environmental Protection Agency that succeeds that standard, is exceeded.

SEC. 2.5. Section 40451 of the Health and Safety Code is amended to read:

40451. (a) The south coast district shall use the Pollutant Standards Index developed by the United States Environmental Protection Agency and shall report and forecast pollutant levels daily for dissemination in the print and electronic media. Commencing July 1, 2001, the south coast district shall also include in its report and forecast levels of PM2.5 in excess of the 24-hour federal ambient air standard, as adopted in July 1997, or any standard adopted by the United States Environmental Protection Agency that succeeds that standard.

(b) Using existing communication facilities available to it, the south coast district shall notify all schools and, to the extent feasible and upon request, daycare centers in the South Coast Air Basin whenever any federal primary ambient air quality standard is predicted to be exceeded. Commencing July 1, 2001, using communication facilities available to it, the south coast district shall also notify all schools in the South Coast Air Basin when the ambient level of PM2.5 is predicted to exceed the 24-hour federal ambient air standard, as adopted in July 1997, or any standard adopted by the United States Environmental Protection Agency that succeeds that standard.

(c) Whenever it becomes available, the south coast district shall disseminate to schools, amateur adult and youth athletic organizations, and all public agencies operating parks and recreational facilities in the south coast district the latest scientific information and evidence regarding the need to restrict exercise and other outdoor activities during periods when federal primary air quality standards and the 24-hour federal ambient air standard for PM2.5, as adopted in July 1997, or any standards adopted by the United States Environmental Protection Agency that succeed those standards, are exceeded.

(d) Once every two months and annually, the south coast district shall report on the number of days and locations that federal and state ambient air quality standards were exceeded . Commencing July 1, 2001, the south coast district shall also include in that report the number of days and locations on and at which the 24-hour federal ambient air standard for PM2.5, as adopted in July 1997, or any standard adopted by the United States Environmental Protection Agency that succeeds that standard, is exceeded.

SEC. 3. Section 40451.5 is added to the Health and Safety Code, to read:

40451.5. On or before January 1, 2001, the south coast district shall revise its forecasting models to allow the district to predict, using state-of-the-science techniques, when the 24-hour federal ambient air standard for PM2.5, as adopted in July 1997, or any standard adopted by the United States Environmental Protection Agency that succeeds that standard, may be expected to be exceeded.

SEC. 4. Section 40471 is added to the Health and Safety Code, to read:

40471. (a) Within one year from the date that a new federal ambient air standard for PM2.5 is adopted, the south coast district shall make a preliminary assessment of the nature of PM2.5 in the South Coast Air Basin, and shall revise its air quality management plan to include a discussion of how the south coast district's current PM10 strategy and ozone plan will assist the South Coast Air Basin to make progress in achieving compliance with the 24-hour federal ambient air standard for PM2.5.

(b) On or before December 31, 2001, and every three years thereafter, as part of the preparation of the air quality management plan revisions, the south coast district board, in conjunction with a public health organization or agency, shall prepare a report on the health impacts of particulate matter air pollution in the South Coast Air Basin. The south coast district board shall submit its report to the advisory council appointed pursuant to Section 40428 for review and comment. The advisory council shall undertake peer review concerning the report prior to its finalization and public release. The south coast district board shall hold public hearings concerning the report and the peer review, and shall append to the report any additional material or information that results from the peer review and public hearings.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 40451 of the Health and Safety Code proposed by both this bill and SB 25. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 40451 of the Health and Safety Code, and (3) this bill is enacted after SB 25, in which case Section 2 of this bill shall not become operative.

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

CHAPTER 478

An act to add Division 17 (commencing with Section 17000) to the Family Code, to amend Section 12803 of the Government Code, to amend Sections 19271, 19533, and 19548 of, and to repeal Section 19271.5 of, the Revenue and Taxation Code, to add Section 1088.8 to the Unemployment Insurance Code, to amend Sections 11476.6, 11477, 11477.02, 11477.04, 11479, 11485, and 18205 of, to amend and renumber Section 11479.7 of, to amend and repeal Section 11475.3 of, and to repeal Sections 11350, 11350.1, 11350.2, 11350.3, 11350.4, 11350.5, 11350.6, 11350.7, 11350.8, 11350.9, 11351, 11352, 11354, 11355, 11356, 11357, 11475, 11475.1, 11475.15, 11475.4, 11475.5, 11475.8, 11476, 11476.1, 11478, 11478.2, 11478.5, 11478.51, 11478.6, 11478.7, 11478.8, 11478.9, 11479.5, 11479.6, 11479.7, 11488, 11489, 11490, 11491, 11492, 11492.1, 15200.6, 15200.75, 15200.81, 15200.92, 15200.95, 15200.96, 15200.97, 15200.98, of the Welfare and Institutions Code, relating to social services.

[Approved by Governor September 24, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Division 17 (commencing with Section 17000) is added to the Family Code, to read:

DIVISION 17. SUPPORT SERVICES

CHAPTER 1. DEPARTMENT OF CHILD SUPPORT SERVICES

Article 1. General

17000. The definitions contained in this section, and definitions applicable to Division 9 (commencing with Section 3500), shall govern the construction of this division, unless the context requires otherwise.

(a) "Child support debt" means the amount of money owed as child support pursuant to a court order.

(b) "Child support order" means any court order for the payment of a set or determinable amount of support by a parent or a court order requiring a parent to provide for health insurance coverage. "Child support order" includes any court order for spousal support or for medical support to the extent these obligations are to be enforced by a single state agency for child support under Title IV-D.

(c) "Court" means any superior court of this state and any court or tribunal of another state that has jurisdiction to determine the liability of persons for the support of another person.

(d) "Court order" means any judgment, decree, or order of any court of this state that orders the payment of a set or determinable amount of support by a parent. It does not include any order or decree of any proceeding in which a court did not order support.

(e) "Department" means the Department of Child Support Services.

(f) "Dependent child" means any of the following:

(1) Any person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) Any unmarried person who is at least 18 years of age but who has not reached his or her 19th birthday, is not emancipated, and is a student regularly attending high school or a program of vocational or technical training designed to train that person for gainful employment.

(g) "Director" means the Director of Child Support Services or his or her authorized representative.

(h) "Local child support agency" means the county department of child support services created pursuant to this chapter and with which the department has entered into a cooperative agreement, to secure child and spousal support, medical support, and determine paternity in a county.

(i) "Parent" means the natural or adoptive father or mother of a dependent child, and includes any person who has an enforceable obligation to support a dependent child.

(j) "Public assistance" includes any money payments made to or for the benefit of any dependent child, including all payments paid for food, shelter, medical care, clothing, transportation, or any other goods or services.

(k) "Public assistance debt" means any amount paid under the California Work Opportunity and Responsibility to Kids Act, contained in Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, for the benefit of any dependent child or the caretaker of a child for whom the department is authorized to seek recoupment under this division, subject to applicable federal law.

(*l*) "Title IV-D" or "IV-D" means Part D of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.).

Article 2. Organization

17200. The Department of Child Support Services is hereby created within the California Health and Human Services Agency. The department shall administer all services and perform all functions necessary to establish, collect, and distribute child support.

17202. The department is hereby designated the single organizational unit whose duty it shall be to administer the Title IV-D state plan for securing child and spousal support, medical support,

and determining paternity. State plan functions shall be performed by other agencies as required by law, by delegation of the department, or by cooperative agreements.

17204. The department consists of the director and such division or other administrative units as the director may find necessary.

17206. The department shall ensure that there is an adequate organizational structure and sufficient staff to perform functions delegated to any governmental unit relating to Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, including a sufficient number of attorneys to ensure that all requirements of due process are satisfied in the establishment and enforcement of child support orders.

17208. (a) The department shall reduce the cost of, and increase the speed and efficiency of, child support enforcement operations. It is the intent of the Legislature to operate the child support enforcement program through local child support agencies without a net increase in state General Fund or county general fund costs, considering all increases to the General Fund as a result of increased collections and welfare recoupment.

(b) The department shall maximize the use of federal funds available for the costs of administering a child support services department, and to the maximum extent feasible, obtain funds from federal financial incentives for the efficient collection of child support, to defray the remaining costs of administration of the department consistent with effective and efficient support enforcement.

17210. The department shall ensure that the local child support agency offices and services are reasonably accessible throughout the counties, and shall establish systems for informing the public, including custodial and noncustodial parents of dependent children, of its services and operations.

17211. The department shall administer the Child Support Assurance Demonstration Project established by Article 5 (commencing with Section 18241) of Chapter 3.3 of Part 6, and the county demonstration projects to provide employment and training services to nonsupporting noncustodial parents authorized by Section 18203.5.

17212. (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 17604 and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9.

(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 division, 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 of the Welfare and Institutions Code 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 or 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 local child support agency 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 local child support agency is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 17400.

(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.

Article 3. Director of Child Support Services

17300. With the consent of the Senate, the Governor shall appoint, to serve at his or her pleasure, an executive officer who shall be director of the department. The director shall be appointed wholly on the basis of training, demonstrated ability, experience, and leadership in organized child support enforcement administration. The director shall receive the salary provided for by Chapter 6 (commencing with Section 11550), Part 1, Division 3, Title 2 of the Government Code.

The Governor also may appoint, to serve at his or her pleasure, not to exceed two chief deputy directors of the department, and one deputy director of the department. The salaries of the chief deputy directors and the deputy director shall be fixed in accordance with law.

17302. The director shall do all of the following:

(a) Be responsible for the management of the department.

(b) Administer all federal and state laws and regulations pertaining to the administration of child support enforcement obligations.

(c) Perform all duties as may be prescribed by law, and any other administrative and executive duties imposed by law.

(d) Observe, and report to the Governor, the Legislature, and the public on, the conditions of child support enforcement activities throughout the state pursuant to subdivision (c) of Section 17602.

17303. The Legislature finds and declares all of the following:

(a) Title IV-D of the federal Social Security Act, contained in Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, requires that there be a single state agency for child support enforcement. California's child support enforcement system is extremely complex, involving numerous state and local agencies. The state's system was divided between the State Department of Social Services, the Attorney General's office, the Franchise Tax Board, the Employment Development Department, the Department of Motor Vehicles, and the 58 county district attorneys' offices.

(b) The lack of coordination and integration between state and local child support agencies has been a major impediment to getting support to the children of this state. An effective child support enforcement program must have strong leadership and effective state oversight and management to best serve the needs of the children of the state.

(c) The state would benefit by centralizing its obligation to hold counties responsible for collecting support. Oversight would be best accomplished by direct management by the state.

(d) A single state agency for child support enforcement with strong leadership and direct accountability for local child support agencies will benefit the taxpayers of the state by reducing the inefficiencies introduced by involving multiple layers of government in child support enforcement operations.

17304. To address the concerns stated by the Legislature in Section 17303, each county shall establish a new county department of child support services. Each department is also referred to in this division as the local child support agency. The local child support agency shall be separate and independent from any other county department and shall be responsible for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall refer all cases requiring criminal enforcement services to the district attorney and the district attorney shall prosecute those cases, as appropriate. If a district attorney fails to comply with this section, the director shall notify the Attorney General and the Attorney General shall take appropriate action to secure compliance. The director shall be responsible for implementing and administering all aspects of the state plan that direct the functions to be performed by the local child support agencies relating to their Title IV-D operations. In developing the new system, all of the following shall apply:

(a) The director shall negotiate and enter into cooperative agreements with county and state agencies to carry out the requirements of the state plan and provide services relating to the establishment of paternity or the establishment, modification, or

enforcement of child support obligations as required pursuant to Section 654 of Title 42 of the United States Code. The cooperative agreements shall require that the local child support agencies are reasonably accessible to the citizens of each county and are visible and accountable to the public for their activities. The director, in consultation with the impacted counties, may consolidate the local child support agencies, or any function of the agencies, in more than one county into a single local child support agency, if the director determines that the consolidation will increase the efficiency of the state Title IV-D program and each county has at least one local child support office accessible to the public.

(b) The director shall have direct oversight, management and control of the local child support agency, and no other local or state agency shall have any authority over the local child support agency as to any function relating to its Title IV-D operations. The local child support agency shall be responsible for the performance of child support enforcement activities required by law and regulation in a manner prescribed by the department. The administrator of the local child support agency shall be responsible for reporting to and responding to the director on all aspects of the child support program. Nothing in this section prohibits the local child support agency, with the prior approval of the director, from entering into cooperative arrangements with other county departments, as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation submitted to the department, approved by the director. Within 60 days of receipt of a plan of cooperation from the local child support agency, the department shall either approve the plan of cooperation or notify the agency that the plan is denied. If an agency is notified that the plan is denied, the agency shall have the opportunity to resubmit a revised plan of cooperation. If the director fails to respond in writing within 60 days of receipt, the plan shall otherwise be deemed approved. Nothing in this section shall be deemed an approval of program costs relative to the cooperative arrangements entered into by the counties with other county departments.

(c) In order to minimize the disruption of services provided and to capitalize on the expertise of employees, the director shall create a program that builds on existing staff and facilities to the fullest extent possible. All assets of the family support division in the district attorney's office shall become assets of the local child support agency.

(d) (1) All employees and other personnel who serve the office of the district attorney and perform child support collection and enforcement activities shall become the employees and other personnel of the county child support agency 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, and health and pension plans.

(2) Permanent employees of the office of the district attorney on the effective date of this chapter shall be deemed qualified, and no other qualifications shall be required for employment or retention in the county child support agency. Probationary employees on the effective date of this chapter shall retain their probationary status and rights, and shall not be deemed to have transferred, so as to require serving a new probationary period.

(3) Employment seniority of an employee of the office of the district attorney on the effective date of this chapter shall be counted toward seniority in the county child support agency and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(4) An employee organization that has been recognized as the representative or exclusive representative of an established appropriate bargaining unit of employees who perform child support collection and enforcement activities shall continue to be recognized as the representative or exclusive representative of the same employees of the county.

(5) An existing memorandum of understanding or agreement between the county or the office of the district attorney and the employee organization shall remain in effect and be fully binding on the parties involved for the term of the agreement.

(6) Nothing in this section shall be construed to limit the rights of employees or employee organizations to bargain in good faith on matters of wages, hours, or other terms and conditions of employment, including the negotiation of workplace standards within the scope of bargaining as authorized by state and federal law.

(7) (A) Except as provided in subparagraph (B), a public agency shall, in implementing programs affected by the act of addition or amendment of this chapter to this code, perform program functions exclusively through the use of civil service employees of the public agency.

(B) Prior to transition from the district attorney to the local child support agency under Section 17305, the district attorney may continue existing contracts and their renewals, as appropriate. After the transition under Section 17305, any contracting out of program functions shall be approved by the director. The director shall approve or disapprove a proposal to contract out within 60 days. Failure of the director to respond to a request to contract out within 60 days after receipt of the request shall be deemed approval, unless the director submits an extension to respond, which in no event shall be longer than 30 days.

(e) The administrator of the local child support agency shall be an employee of the county selected by the board of supervisors pursuant to the qualifications established by the department. The administrator may hire staff, including attorneys, to fulfill the functions required by the agency and in conformity with any staffing requirements adopted by the department, including all those set

forth in Section 17306. All staff shall be employees of the county and shall be directly responsible to the department for the administration of the child support enforcement program.

17305. (a) In order to achieve an orderly and timely transition to the new system with minimal disruption of services, the director shall begin the transition from the office of the district attorney to the local child support agencies pursuant to Section 17304, commencing January 1, 2001. The director shall transfer at least 50 percent of the state cases into the new system each year. The transition shall be completed by January 1, 2003. In determining the order in which counties will be transferred from the office of the district attorney to the local child support agencies, the director shall do all of the following:

(1) Consider the performance of the counties in establishing and collecting child support.

(2) Minimize the disruption of the services provided by the counties.

(3) Optimize the chances of a successful transition.

(b) The director shall consult with the district attorney to achieve an orderly transition and to minimize the disruption of services. Each district attorney shall cooperate in the transition as requested by the director.

(c) To minimize any disruption of services provided under the child support enforcement program during the transition, each district attorney shall:

(1) Continue to be designated the single organizational unit whose duty it shall be to administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity for that county until such time as the county is notified by the director that the county has been transferred pursuant to subdivision (a) or sooner under Section 17602.

(2) At a minimum, maintain all levels of funding, staffing, and services as of January 1, 1999, to administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity. If the director determines that a district attorney has lowered the funding, staffing, or services of the child support enforcement program, the director may withhold part or all state and federal funds, including incentive funds, from the district attorney or may assess a portion of any penalty against the county that the federal government imposes on California's child support program for its failure to implement by October 1, 1997, an automated child support system.

17306. (a) The Legislature finds and declares all of the following:

(1) While the State Department of Social Services has had statutory authority over the child support system, the locally elected district attorneys have operated their county programs with a great deal of autonomy.

(2) District attorneys have operated the child support programs with different forms, procedures and priorities, making it difficult to adequately evaluate and modify performance statewide.

(3) Problems collecting child support reflect a fundamental lack of leadership and accountability in the collection program. These management problems have cost California taxpayers and families billions of dollars.

(b) The director shall develop uniform forms, policies and procedures to be employed statewide by all local child support agencies. Pursuant to this subdivision, the director shall:

(1) Adopt uniform procedures and forms.

(2) Establish standard caseworker to case staffing ratios.

(3) Establish standard attorney to caseworker ratios.

(4) Institute a consistent statewide policy on the appropriateness of closing cases to ensure that, without relying solely on federal minimum requirements, all cases are fully and pragmatically pursued for collections prior to closing.

(5) Evaluate the best practices for the establishment, enforcement, and collection of child support, for the purpose of determining which practices should be implemented statewide in an effort to improve performance by local child support agencies. In evaluating the best practices, the director shall review existing practices in better performing counties within California, as well as practices implemented by other state Title IV-D programs nationwide.

(6) Evaluate the best practices for the management of effective child support enforcement operations for the purpose of determining what management structure should be implemented statewide in an effort to improve the establishment, enforcement, and collection of child support by local child support agencies, including an examination of the need for attorneys in management level positions. In evaluating the best practices, the director shall review existing practices in better performing counties within California, as well as practices implemented by other state Title IV-D programs nationwide.

(7) Set priorities for the use of specific enforcement mechanisms for use by both the local child support agency and the Franchise Tax Board. As part of establishing these priorities, the director shall set forth caseload processing priorities in an effort to better understand the makeup of the child support caseload and to target enforcement efforts and services in a way that will maximize collections and avoid welfare dependency.

(8) Develop uniform training protocols, require periodic training of all child support staff, and conduct training as appropriate.

(9) Review and approve annual budgets submitted by the local child support agencies to ensure each local child support agency operates an effective and efficient program that complies with all

federal and state laws, regulations, and directives, including the directive to hire sufficient staff.

(c) The director shall submit any forms intended for use in court proceedings to the Judicial Council for approval at least six months prior to the implementation of the use of the forms.

(d) In adopting the forms, policies, and procedures, the director shall consult with the California Family Support Council, the California State Association of Counties, labor organizations, custodial and noncustodial parent advocates, and the appropriate committees of the Legislature.

(e) The director shall adopt regulations implementing the forms, policies, and procedures established pursuant to this section not later than January 1, 2001.

17308. The director shall assume responsibility for implementing and managing all aspects of a single statewide automated child support system that will comply with state and federal requirements. The director may delegate responsibility to, or enter into an agreement with, any agency or entity that it deems necessary to satisfy this requirement.

17309. Effective October 1, 1998, the state shall operate a Child Support Centralized Collection and Distribution Unit as required by federal law (42 U.S.C. Secs. 654 (27), 654a(g), and 654b).

17310. (a) The director shall formulate, adopt, amend, or repeal regulations and general policies affecting the purposes, responsibilities, and jurisdiction of the department that are consistent with law and necessary for the administration of the state plan for securing child support and enforcing spousal support orders and determining paternity.

(b) Notwithstanding any other provision of law, all regulations, including, but not limited to, regulations of the State Department of Social Services and the State Department of Health Services, relating to child support enforcement shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed by the agency that originally enacted the regulation. The director shall request the repeal or amendment of regulations relating to child support or the child support program that will be superseded or in conflict with regulations that the department has or will adopt as the single state agency responsible for the Title IV-D child support program. All regulations relating to child support may be enforced by the department or by the agency that originally enacted the regulations as shall be agreed upon between the director and the agency that originally enacted the regulation. These agreements shall be in writing and notice of each agreement shall be published in the California Administrative Register.

17312. (a) The director is the only person authorized to adopt regulations, orders, or standards of general application to implement, interpret, or make specific the law enforced by the department. Regulations, orders, and standards shall be adopted, amended, or

repealed by the director only in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In adopting regulations, the director shall strive for clarity of language that may be readily understood by those administering public social services or subject to those regulations.

(c) The rules of the department need not specify or include the detail of forms, reports, or records, but shall include the essential authority by which any person, agency, organization, association, or institution subject to the supervision or investigation of the department is required to use, submit, or maintain the forms, reports, or records.

(d) The department's regulations and other materials shall be made available pursuant to the California Code of Regulations and in the same manner as are materials of the State Department of Social Services under the provisions of Section 205.70 of Title 45 of the Code of Federal Regulations.

17314. (a) Subject to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), the director shall appoint any assistants and other employees that are necessary for the administration of the affairs of the department and shall prescribe their duties and, subject to the approval of the Department of Finance, fix their salaries.

(b) As the director adopts a plan for a local child support agency to assume responsibility for child support enforcement activities in any county served by a district attorney pursuant to Section 17304, the director shall hire a sufficient number of regional state administrators to oversee the local child support agencies to ensure compliance with all state and federal laws and regulations. The regions shall be divided based on the total caseload of each local child support agency. The responsibilities of the regional state administrators shall include all of the following:

(1) Conducting regular and comprehensive site visits to the local child support agencies assigned to their region and preparing quarterly reports to be submitted to the department. The local child support agencies shall fully cooperate with all reasonable requests made by the regional state administrators, including providing all requested data on the local child support agency's program.

(2) Notifying a local child support agency of any potential or actual noncompliance with any state or federal law or regulation by the agency and working with the local child support agency to develop an immediate plan to ensure compliance.

(3) Participating in program monitoring teams as set forth in subdivision (c) of Section 17602.

(4) Participating in meetings with all regional state administrators and the director on at least a monthly basis to promote statewide uniformity as to the functions and structure of the local child support agencies. The regional state administrators may recommend

proposals for approval and adoption by the director to achieve this goal.

(5) Responding to requests for management or technical assistance regarding program operations by local child support agencies.

17316. No person, while holding the office of director, shall be a trustee, manager, director, or other officer or employee of any agency performing any function supervised by the department or any institution that is subject to examination, inspection, or supervision by the department.

17318. Except as otherwise expressly provided, Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code, as it may be added to or amended from time to time, shall apply to the conduct of the department.

17320. The department shall coordinate with the State Department of Social Services to avoid the imposition of any federal penalties that cause a reduction in the state's Temporary Assistance to Needy Families grant, payable pursuant to Section 603(a)(1) of Title 42 of the United States Code.

CHAPTER 2. CHILD SUPPORT ENFORCEMENT

Article 1. Support Obligations

17400. (a) (1) Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(2) Notwithstanding any other provision of law, on and after January 1, 2000, the Franchise Tax Board shall have responsibility and authority for the enforcement and collection of child support delinquencies in support of the child support activities of the Department of Child Support Services, local child support agencies, and subject to all federal and state laws, regulations, and directives relating to Title IV-D child support programs.

(3) (A) For purposes of paragraph (2), "child support delinquency" means any of the following:

(i) (I) An arrearage or otherwise past due amount that exists when an obligor fails to make any court-ordered support payment when due.

(II) The unpaid amount is more than 60 days past due.

(III) The aggregate of all amounts described in subclauses (I) and (II) exceeds one hundred dollars ($100).

(ii) As otherwise defined by guidelines prescribed by the Department of Child Support Services in consultation with the Franchise Tax Board and may include or be limited to interest, fees, penalties, spousal support, or medical support.

(B) The local child support agency shall transfer child support delinquencies to the Franchise Tax Board in the form and manner and at the time prescribed by the Franchise Tax Board pursuant to paragraph (2) of subdivision (a) of Section 19271 of the Revenue and Taxation Code.

(C) After a local child support agency transfers a delinquent child support obligation to the Franchise Tax Board pursuant to this section, the local child support agency shall continue to facilitate resolution of the child support obligation in coordination with the Franchise Tax Board.

(b) If a child support delinquency exists at the time a case is opened by the local child support agency, the responsibility for the enforcement and collection of the delinquency shall be transferred to the Franchise Tax Board no later than 30 days after receipt of the case by the local child support agency. Any reference to the local child support agency in connection with the enforcement and collection of child support delinquencies shall be deemed a reference to the Franchise Tax Board. This transfer of responsibility and authority is in support of the local child support agency solely for the administration of the enforcement and collection of child support delinquencies and shall not in any manner transfer any responsibilities the local child support agency may have and any responsibilities the Department of Child Support Services may have as the Title IV-D agency. A child support delinquency, as specified in this section, shall be enforced and collected by the Franchise Tax Board pursuant to Section 19271 of the Revenue and Taxation Code.

(c) Actions brought by the local child support agency to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The local child support agency's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(d) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the

Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 17404. The Judicial Council may combine the summons and complaint in a single form.

(2) The simplified complaint form shall provide the defendant with notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the income or income history of the defendant as known to the local child support agency. If the defendant's income or income history is unknown to the local child support agency, the complaint shall inform the defendant that income shall be presumed in an amount that results in a court order equal to the minimum basic standard of adequate care provided in Section 11452 of the Welfare and Institutions Code unless information concerning the defendant's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the defendant that the proposed judgment will become effective if he or she fails to file an answer with the court within 30 days of service.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the local child support agency or the Attorney General in all cases brought under this section or Section 17404.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However, failure to serve the answer form may be used as evidence in any proceeding under Section 17432 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the local child support agency with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the local child support agency or the superior court clerk.

(e) In any action brought or enforcement proceedings instituted by the local child support agency pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the local child support agency at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(f) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the agencies established by this section a notice, in clear and simple language prescribed by the Director of Child Support Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals, whether or not they are recipients of public assistance.

(g) (1) In any action to establish a child support order brought by the local child support agency in the performance of duties under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under this code.

(2) The local child support agency shall file a motion for an order for temporary support within the following time limits:

(A) If the defendant is the mother, a presumed father under Section 7611, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(B) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

(3) If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

(4) If the local child support agency fails to file a motion for an order for temporary support within time limits specified in this section, the local child support agency shall be barred from obtaining

a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

(5) Nothing in this section prohibits the local child support agency from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the Department of Child Support Services.

(6) Nothing in this section shall otherwise limit the ability of the local child support agency from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

(h) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the department for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the local child support agency of an initial order for child support that may include medical support or that is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, and (5) the transfer of the enforcement and collection of child support delinquencies to the Franchise Tax Board under Section 19271 of the Revenue and Taxation Code in support of the local child support agency.

(i) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(j) (1) The local child support agency is the public agency responsible for administering wage withholding for current support the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(2) Nothing in this section shall limit the authority of the local child support agency granted by other sections of this code or otherwise granted by law, except to the extent that the law is inconsistent with the transfer of the responsibility and authority for

enforcement and collection of delinquent child support to the Franchise Tax Board.

(k) In the exercise of the authority granted under this article, the local child support agency may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under this code, or other proceeding in which child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the local child support agency may request any relief that is appropriate that the local child support agency is authorized to seek.

(*l*) The local child support agency shall comply with any guidelines established by the department that set time standards for responding to requests for assistance in locating noncustodial parents, establishing paternity, establishing child support awards, and collecting child support payments.

(m) As used in this article, medical support activities that the local child support agency is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(n) (1) Notwithstanding any other law, venue for an action or proceeding under this division shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the local child support agency, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477 of the Welfare and Institutions Code.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(o) The local child support agency of one county may appear on behalf of the local child support agency of any other county in an action or proceeding under this part.

17402. (a) In any case of separation or desertion of a parent or parents from a child or children which results in aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code being granted to that family, the noncustodial parent or parents shall be obligated to the county for an amount equal to the following:

(1) The amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction; or in the absence of the court order, the amount specified in paragraph (2).

(2) The amount of support that would have been specified in an order for the support and maintenance of the family during the period of separation or desertion. However, the amount in excess of the aid paid to the family shall not be retained by the county, but disbursed to the family.

(3) The obligation shall be reduced by any amount actually paid by the parent directly to the custodian of the child or to the local child support agency of the county in which the child is receiving aid during the period of separation or desertion for the support and maintenance of the family.

(b) The local child support agency shall take appropriate action pursuant to this section as provided in subdivision (*l*) of Section 17400. The local child support agency may establish liability for child support as provided in subdivision (a) when public assistance was provided by another county or by other counties.

(c) The amount of the obligation established under paragraph (2) of subdivision (a) shall be determined by using the appropriate child support guidelines currently in effect. If one parent remains as a custodial parent, the guideline support shall be computed in the normal manner. If neither parent remains as a custodial parent, the support shall be computed by combining the noncustodial parents' incomes and placing the figure obtained in the column for noncustodial parent. A zero shall be placed in the column for the custodial parent and the amount of guideline support resulting shall be proportionately shared between the parents as directed by the court. The parents shall pay the amount of support specified in the support order to the local child support agency.

17404. (a) Notwithstanding any other statute, in any action brought by the local child support agency 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 local child support agency 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 17402, 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 other provisions of this 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 other provisions of this 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 local child support agency 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 local child support agency in conjunction with the notice required by subdivision (e) of Section 17406. 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 local child support agency 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 local child support agency or a noticed motion filed by either parent. The local child support agency shall serve a copy of any order for joinder of a parent obtained by the local child support agency'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 local child support agency 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 local child support agency 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 this code. Except as otherwise provided by law, the local child support agency 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 local child support agency close his or her case and the case has been closed in accordance with federal regulation or policy.

(f) (1) A parent who has requested or is receiving support enforcement services of the local child support agency may take independent action to modify a support order made pursuant to this section while support enforcement services are being provided by the local child support agency. The parent shall serve the local child support agency with notice of any action filed to modify the support order and provide the local child support agency 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 local child support agency may take independent action to enforce a support order made pursuant to this

section while support enforcement services are being provided by the local child support agency with the written consent of the local child support agency. At least 30 days prior to filing an independent enforcement action, the parent shall provide the local child support agency 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 local child support agency shall either provide written consent for the parent to proceed with the independent enforcement action or notify the parent that the local child support agency objects to the parent filing the proposed independent enforcement action. The local child support agency may object only if the local child support agency 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 local child support agency. If the local child support agency does not respond to the parent's written notice within 30 days, the local child support agency shall be deemed to have given consent.

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

(g) Any notice from the local child support agency 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 of the Welfare and Institutions Code.

(i) The Judicial Council shall develop forms to implement this section.

17406. (a) In all actions involving paternity or support, including, but not limited to, other proceedings under this code, and under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, the local child support agency and the 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 local child support agency or Attorney General and any person by virtue

of the action of the local child support agency or the Attorney General in carrying out these statutory duties.

(b) Subdivision (a) is declaratory of existing law.

(c) In all requests for services of the local child support agency or Attorney General pursuant to Section 17400 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 local child support agency or Attorney General shall give notice to the individual requesting services or on whose behalf services have been requested that the local child support agency 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 local child support agency or Attorney General and those persons, and that no such representation or relationship shall arise if the local child support agency 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 local child support agency or Attorney General may provide support enforcement services to the other parent in the future.

(d) The local child support agency or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 17400 who have not otherwise been provided that notice, not later than the date of the next annual notice required under Section 11476.2 of the Welfare and Institutions Code. This notice shall include notification to the recipient of services under Section 17400 that the recipient may inspect the clerk's file at the county clerk's office, and that, upon request, the local child support agency, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The local child support agency 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 17400, as specified in paragraph (2) of subdivision (e) of Section 17404. A notice shall accompany the complaint that informs the recipient that the local child support agency 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 local child support agency or Attorney General shall provide written notice to recipients of services under Section 17400

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 local child support agency 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 local child support agency 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 local child support agency 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 local child support agency or Attorney General receives notice of the hearing less than seven days prior to the hearing, within two days of the receipt by the local child support agency or Attorney General of the notice of the hearing.

(5) The local child support agency or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the local child support agency or Attorney General has current addresses for recipients of support enforcement services.

(g) The local child support agency or Attorney General shall give notice to recipients of services under Section 17400 of every order obtained by the local child support agency 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 local child support agency 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 local child support agency or Attorney General, by sending a copy of the order to the recipient within the timeframe specified by federal law after the local child support agency 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, the notice shall be made in compliance with the requirements of that chapter. The failure of the local child support agency or Attorney General to comply with this subdivision shall not affect the validity of any order.

(h) The local child support agency or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the local child support agency 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 17400 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 17400 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 local child support agency or Attorney General shall not submit to the court for approval a stipulation to establish or modify a support order in the 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 local child support agency 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 17400 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 17400 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 17400 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, 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.

17408. (a) Notwithstanding Section 17404, upon noticed motion of the local child support agency, the superior court may consolidate or combine support or reimbursement arrearages owed by one obligor to one obligee in two or more court files into a single court file, or combine or consolidate two or more orders for current child support into a single court file. A motion to consolidate may be made by a local child support agency only if it is seeking to enforce the orders being consolidated. The motion shall be filed only in the court file the local child support agency is seeking to have designated as the primary file.

(b) Orders may be consolidated regardless of the nature of the underlying action, whether initiated under the Welfare and Institutions Code, this code, or another law. Orders for support shall not be consolidated unless the children involved have the same mother and father and venue is proper pursuant to Section 17400.

(c) Upon consolidation of orders, the court shall designate which court file the support orders are being consolidated into the primary file, and which court files are subordinate. Upon consolidation, the court shall order the local child support agency to file a notice in the subordinate court actions indicating the support orders in those actions were consolidated into the primary file. The notice shall state the date of the consolidation, the name of the court, and the primary file number.

(d) Upon consolidation of orders, the superior court shall not issue further orders pertaining to support in a subordinate court file; and all enforcement and modification of support orders shall occur in the primary court action.

(e) After consolidation of court orders, a single wage assignment for current support and arrearages may be issued when possible.

17410. In any action filed by the local child support agency pursuant to Section 17402 or 17404, the local child support agency shall provide the mother and the alleged father the opportunity to voluntarily acknowledge paternity by signing a paternity declaration as described in Section 7574 prior to a hearing or trial where the paternity of a minor child is at issue. The opportunity to voluntarily acknowledge paternity may be provided either before or after an action pursuant to Section 17402 or 17404 is filed and served upon the

alleged father. For the purpose of meeting the requirements of this section, the local child support agency may afford the defendant an opportunity to enter into a stipulation for judgment of paternity after an action for paternity has been filed in lieu of the voluntary declaration of paternity.

17412. (a) Notwithstanding any other law, an action for child support may be brought by the local child support agency on behalf of a minor child or caretaker parent based upon a voluntary declaration of paternity as provided in Chapter 3 (commencing with Section 7570) of Part 2 of Division 12.

(b) Except as provided in Sections 7576 and 7577, the voluntary declaration of paternity shall be given the same force and effect as a judgment for paternity entered by a court of competent jurisdiction. The court shall make appropriate orders for support of the minor child based upon the voluntary declaration of paternity unless evidence is presented that the voluntary declaration of paternity has been rescinded by the parties or set aside by a court as provided in Section 7575.

(c) The Judicial Council shall develop the forms and procedures necessary to implement this section.

17414. In any action or proceeding brought by the local child support agency to establish parentage pursuant to Section 17400, the court shall enter a judgment establishing parentage upon the filing of a written stipulation between the parties provided that the stipulation is accompanied by a written advisement and waiver of rights which is signed by the defendant. The written advisement and waiver of rights shall be developed by the Judicial Council.

17415. (a) It shall be the duty of the county welfare department to refer all cases where a parent is absent from the home, or where the parents are unmarried and parentage has not been established by the completion and filing of a voluntary declaration of paternity pursuant to Section 7573 or a court of competent jurisdiction, to the local child support agency immediately at the time the application for public assistance, except as provided in Section 11477.04 of the Welfare and Institutions Code, including Medi-Cal benefits, or certificate of eligibility, is signed by the applicant or recipient. If an applicant is found to be ineligible, the applicant shall be notified in writing that the referral of the case to the local child support agency may be terminated at the applicant's request. The county department shall cooperate with the local child support agency and shall make available to him or her all pertinent information as provided in Section 17505.

(b) Upon referral from the county welfare department, the local child support agency shall investigate the question of nonsupport or paternity and shall take all steps necessary to obtain child support for the needy child, enforce spousal support as part of the state plan under Section 17604, and determine paternity in the case of a child born out of wedlock. Upon the advice of the county welfare

department that a child is being considered for adoption, the local child support agency shall delay the investigation and other actions with respect to the case until advised that the adoption is no longer under consideration. The granting of public assistance or Medi-Cal benefits to an applicant shall not be delayed or contingent upon investigation by the local child support agency.

(c) In cases where Medi-Cal benefits are the only assistance provided, the local child support agency shall provide child and spousal support services unless the recipient of the services notifies the local child support agency that only services related to securing Medi-Cal benefits are requested.

(d) Where a court order has been obtained, any contractual agreement for support between the local child support agency or the county welfare department and the noncustodial parent shall be deemed null and void to the extent that it is not consistent with the court order.

(e) Whenever a family which has been receiving public assistance, including Medi-Cal, ceases to receive assistance, including Medi-Cal, the local child support agency shall, to the extent required by federal regulations, continue to enforce support payments from the noncustodial parent until such time as the individual on whose behalf the enforcement efforts are made sends written notice to the local child support agency requesting that enforcement services be discontinued.

(f) The local child support agency shall, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent. In individual cases where utilization of reciprocal arrangements has proven ineffective, the local child support agency may forward to the Attorney General a request to utilize federal courts in order to obtain or enforce orders for child or spousal support. If reasonable efforts to collect amounts assigned pursuant to Section 11477 of the Welfare and Institutions Code have failed, the local child support agency may request that the case be forwarded to the Treasury Department for collection in accordance with federal regulations. The Attorney General, where appropriate, shall forward these requests to the Secretary of Health and Human Services, or a designated representative.

17416. (a) In any case where the local child support agency has undertaken enforcement of support, the local child support agency may enter into an agreement with the noncustodial parent, on behalf of a minor child or children, a spouse, or former spouse for the entry of a judgment without action determining paternity, if applicable, and for periodic child and spousal support payments based on the noncustodial parent's reasonable ability to pay or, if for spousal support, an amount previously ordered by a court of competent jurisdiction. An agreement for entry of a judgment under this section may be executed prior to the birth of the child and may include a

provision that the judgment is not to be entered until after the birth of the child.

(b) A judgment based on the agreement shall be entered only if one of the following requirements is satisfied:

(1) The noncustodial parent is represented by legal counsel and the attorney signs a certificate stating: "I have examined the proposed judgment and have advised my client concerning his or her rights in connection with this matter and the consequences of signing or not signing the agreement for the entry of the judgment and my client, after being so advised, has agreed to the entry of the judgment."

(2) A judge of the court in which the judgment is to be entered, after advising the noncustodial parent concerning his or her rights in connection with the matter and the consequences of agreeing or not agreeing to the entry of the judgment, makes a finding that the noncustodial parent has appeared before the judge and the judge has determined that under the circumstances of the particular case the noncustodial parent has willingly, knowingly, and intelligently waived his or her due process rights in agreeing to the entry of the judgment.

(c) The clerk shall file the agreement, together with any certificate of the attorney or finding of the court, without the payment of any fees or charges. If the requirements of this section are satisfied, the court shall enter judgment thereon without action. The provisions of Article 4 (commencing with Section 4200) of Chapter 2 of Part 2 of Division 9 or Chapter 4 (commencing with Section 4350) of Part 3 of Division 9 shall apply to the judgment. A judgment for support so entered may be enforced by any means by which any other judgment for support may be enforced.

(d) Upon request of the local child support agency in any case under this section, the clerk shall set the matter for hearing by the court. The hearing shall be held within 10 days after the clerk receives the request. The local child support agency may require the person who signed the agreement for the entry of judgment to attend the hearing by process of subpoena in the same manner as the attendance of a witness in a civil action may be required. The presence of the person who signed the agreement for entry of judgment at the hearing shall constitute the presence of the person in court at the time the order is pronounced for the purposes of Section 1209.5 of the Code of Civil Procedure if the court makes the findings required by paragraph (2) of subdivision (b).

(e) The local child support agency shall cause the following to be served, in the manner specified in Section 415.10, 415.20, 415.30, or 415.40 of the Code of Civil Procedure, upon the person who signed the agreement for entry of the judgment and shall file proof of service thereof with the court:

(1) A copy of the judgment as entered.

(2) If the judgment includes an order for child or spousal support payments, a notice stating the substance of the following: "The court has continuing authority to make an order increasing or decreasing the amount of the child or spousal support payments. You have the right to request that the court order the child and spousal support payments be decreased or eliminated entirely."

(f) An order for child and spousal support included in a judgment entered under this section may be modified or revoked as provided in Article 1 (commencing with Section 3650) of Chapter 6 of Part 1 of Division 9 and in (1) Article 1 (commencing with Section 4000) of Chapter 2 of Part 2 of Division 9 or (2) Chapter 2 (commencing with Section 4320) and Chapter 3 (commencing with Section 4330) of Part 3 of Division 9. The court may modify the order to make the support payments payable to a different person.

(g) For the purposes of this section, in making a determination of the noncustodial parent's reasonable ability to pay, any relevant circumstances set out in Section 4005 shall be considered.

(h) After arrest and before plea or trial, or after conviction or plea of guilty, under Section 270 of the Penal Code, if the defendant appears before the court in which the criminal action is pending and the requirements of paragraph (1) or (2) of subdivision (b) have been satisfied, the court may suspend proceedings or sentence in the criminal action, but this does not limit the later institution of a civil or criminal action or limit the use of any other procedures available to enforce the judgment entered pursuant to this section.

(i) Nothing in this section applies to a case where a civil action has been commenced.

17418. In enforcing the provisions of this division, the local child support agency shall inquire of both the custodial and noncustodial parent as to the number of minor children each is legally obligated to support. The local child support agency shall consider the needs of all of these children in computing the level of support requested to be ordered by the court.

17420. After judgment in any court action brought to enforce the support obligation of a noncustodial parent pursuant to the provisions of this division, the court shall issue an earnings assignment order for support pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9.

17422. (a) The state medical insurance form required in Article 1 (commencing with Section 3750) of Chapter 7 of Part 1 of Division 9 shall include, but shall not be limited to, all of the following:

(1) The parent or parents' names, addresses, and social security numbers.

(2) The name and address of each parent's place of employment.

(3) The name or names, addresses, policy number or numbers, and coverage type of the medical insurance policy or policies of the parents, if any.

(4) The name, CalWORKs case number, social security number, and Title IV-E foster care case number or Medi-Cal case numbers of the parents and children covered by the medical insurance policy or policies.

(b) (1) In any action brought or enforcement proceeding instituted by the local child support agency under this division for payment of child or spousal support, a completed state medical insurance form shall be obtained and sent by the local child support agency to the Department of Child Support Services in the manner prescribed by the Department of Child Support Services.

(2) Where it has been determined under Section 3751 that health insurance coverage is not available at no or reasonable cost, the local child support agency shall seek a provision in the support order that provides for health insurance coverage should it become available at no or reasonable cost.

(3) Health insurance coverage shall be considered reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. As used in this section, "health insurance coverage" also includes providing for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.

(c) (1) The local child support agency shall request employers and other groups offering health insurance coverage that is being enforced under this division to notify the local child support agency if there has been a lapse in insurance coverage. The local child support agency shall be responsible for forwarding information pertaining to the health insurance policy secured for the dependent children for whom the local child support agency is enforcing the court ordered medical support to the custodial parent.

(2) The local child support agency shall periodically communicate with the department to determine if there have been lapses in health insurance coverage for public assistance applicants and recipients. The department shall notify the local child support agency when there has been a lapse in court-ordered insurance coverage.

(3) The local child support agency shall take appropriate action, civil or criminal, to enforce the obligation to obtain health insurance when there has been a lapse in insurance coverage or failure by the responsible parent to obtain insurance as ordered by the court.

(4) (A) The local child support agency shall inform all individuals upon their application for child support enforcement services that medical support enforcement services are available.

(B) If the spouse or child does not receive public assistance or aid and is not a Medi-Cal applicant or recipient, the local child support agency shall obtain the applicant's consent prior to providing medical support enforcement services.

17424. (a) A parent who has been served with a medical insurance form shall complete and return the form to the local child support agency's office within 20 calendar days of the date the form was served.

(b) The local child support agency shall send the completed medical insurance form to the department in the manner prescribed by the department.

17428. In any action or judgment brought or obtained pursuant to Section 17400, 17402, 17404, or 17416, a supplemental complaint may be filed, pursuant to Section 464 of the Code of Civil Procedure and Section 2330.1, either before or after a final judgment, seeking a judgment or order of paternity or support for a child of the mother and father of the child whose paternity and support are already in issue before the court. A supplemental judgment entered in the proceedings shall include, when appropriate and requested in the supplemental complaint, an order establishing or modifying support for all children named in the original or supplemental actions in conformity with the statewide uniform guideline for child support. A supplemental complaint for paternity or support of children may be filed without leave of court either before or after final judgment in the underlying action. Service of the supplemental summons and complaint shall be made in the manner provided for the initial service of a summons by the Code of Civil Procedure.

17430. (a) Notwithstanding any other provision of law, in any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, a judgment shall be entered if the defendant fails to file an answer or otherwise appear in the action within 30 days of service of process upon the defendant.

(b) If the defendant fails to file an answer with the court within 30 days of having been served as specified in subdivision (c) of Section 17400, the proposed judgment shall become effective unless the local child support agency has filed a declaration and amended proposed judgment pursuant to subdivision (c).

(c) If the local child support agency receives additional financial information within 30 days of service of the complaint and proposed judgment on the defendant and the additional information would result in a support order that is different from the amount in the proposed judgment, the local child support agency shall file a declaration setting forth the additional information and an amended proposed judgment. The declaration and amended proposed judgment shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law. The defendant's time to answer or otherwise appear shall be extended to 30 days from the date of service of the declaration and amended proposed judgment.

(d) Upon entry of the judgment, the clerk of the court shall mail by first-class mail, postage prepaid, a notice to the defendant that his

or her default has been taken and that the proposed judgment has been entered.

17432. (a) In any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, the court may, on any terms that may be just, relieve the defendant from that part of the judgment or order concerning the amount of child support to be paid. This relief may be granted after the six-month time limit of Section 473 of the Code of Civil Procedure has elapsed, based on the grounds, and within the time limits, specified in this section.

(b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in subdivision (c) of Section 17400 and that were entered after the entry of the default of the defendant under Section 17430. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage.

(c) The court may set aside the child support order contained in a judgment described in subdivision (b) if the defendant's income was substantially different for the period of time during which the judgment was effective compared with the income defendant was presumed to have. A "substantial difference" means that amount of income that would result in an order for support that deviates from the order entered by default by 20 percent or more. If the difference between the defendant's actual income and the presumed income would result in an order for support that deviates from the order entered by default by less than 20 percent, the court may set aside the child support order only if the court states in writing or on the record that the defendant is experiencing an extreme financial hardship due to the circumstances enumerated in Section 4071 and that a set aside of the default judgment is necessary to accommodate those circumstances.

(d) Application for relief under this section shall be accompanied by a copy of the answer or other pleading proposed to be filed together with an income and expense declaration or simplified financial statement and tax returns for any relevant years. The Judicial Council may combine the application for relief under this section and the proposed answer into a single form.

(e) The burden of proving that the actual income of the defendant deviated substantially from the presumed income shall be on the defendant.

(f) A motion for relief under this section shall be filed within 90 days of the first collection of money by the local child support agency or the obligee. The 90-day time period shall run from the date that the local child support agency receives the first collection or from the date that the defendant is served with notice of the collection, whichever date occurs first. If service of the notice is by mail, the date of service shall be as specified in Section 1013 of the Code of Civil Procedure.

(g) In all proceedings under this section, before granting relief, the court shall consider the amount of time that has passed since the entry of the order, the circumstances surrounding the defendant's default, the relative hardship on the child or children to whom the duty of support is owed, the caretaker parent, and the defendant, and other equitable factors that the court deems appropriate.

(h) If the court grants the relief requested, the court shall issue a new child support order using the appropriate child support guidelines currently in effect. The new order shall have the same commencement date as the order set aside.

17434. (a) The department shall publish a booklet describing the proper procedures and processes for the collection and payment of child and spousal support. The booklet shall be written in language understandable to the lay person and shall direct the reader to obtain the assistance of the local child support agency, the family law facilitator, or legal counsel where appropriate. The department may contract on a competitive basis with an organization or individual to write the booklet.

(b) The department shall have primary responsibility for the design and development of the contents of the booklet. The department shall solicit comment regarding the content of the booklet from the Director of the Administrative Office of the Courts. The department shall verify the appropriateness and accuracy of the contents of the booklet with at least one representative of each of the following organizations:

(1) A local child support agency.

(2) The State Attorney General's office.

(3) The California Family Support Council.

(4) A community organization that advocates for the rights of custodial parents.

(5) A community organization that advocates for the rights of supporting parents.

(c) Upon receipt of booklets on support collection, each county welfare department shall provide a copy to each head of household whose application for public assistance under this division has been approved and for whom support rights have been assigned pursuant to Section 11477 of the Welfare and Institutions Code. The department shall provide copies of the booklet to local child support agencies for distribution, and to any person upon request. The department shall also distribute the booklets to all superior courts. Upon receipt of those booklets, each clerk of the court shall provide two copies of the booklet to the petitioner or plaintiff in any action involving the support of a minor child. The moving party shall serve a copy of the booklet on the responding party.

(d) The department shall expand the information provided under its toll-free information hotline in response to inquiries regarding the process and procedures for collection and payment of child and spousal support. This toll-free number shall be advertised as

providing information on child and spousal support. The hotline personnel shall not provide legal consultation or advice, but shall provide only referral services.

(e) The department shall maintain a file of referral sources to provide callers to the telephone hotline with the following information specific to the county in which the caller resides:

(1) The location and telephone number of the local child support agency, the county welfare office, the family law facilitator, and any other government agency that handles child and spousal support matters.

(2) The telephone number of the local bar association for referral to attorneys in family law practice.

(3) The name and telephone number of at least one organization that advocates the payment of child and spousal support or the name and telephone number of at least one organization that advocates the rights of supporting parents, if these organizations exist in the county.

Article 2. Collections and Enforcement

17500. (a) The local child support agency may refer child support obligations that are not delinquent, or past due amounts, to the Franchise Tax Board pursuant to Section 19271.5 of the Revenue and Taxation Code.

(b) The local child support agency is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). To enhance child support enforcement, the local child support agency may delegate this responsibility to the Franchise Tax Board for purposes of collecting child support payments that are not delinquent, or past due amounts, as authorized under subdivision (a) of Section 19271.5 of the Revenue and Taxation Code.

Nothing in this section shall limit the authority of the local child support agency granted by other sections of this code or otherwise granted by law, except to the extent that the law is inconsistent with the authority to refer child support accounts to the Franchise Tax Board for collection pursuant to Section 19271.5 of the Revenue and Taxation Code.

17502. A local child support agency who is collecting child support payments on behalf of a child and who is unable to deliver the payments to the obligee because the local child support agency is unable to locate the obligee shall make all reasonable efforts to locate the obligee for a period of six months. If the local child support agency is unable to locate the obligee within the six-month period, he or she shall return the undeliverable payments to the obligor, with written notice advising the obligor that (a) the return of the funds does not relieve the obligor of the support order, and (b) the obligor should consider placing the funds aside for purposes of child support in case the obligee appears and seeks collection of the undistributed

amounts. No interest shall accrue on any past due child support amount for which the obligor made payment to the local child support agency for six consecutive months, or on any amounts due thereafter until the obligee is located, provided that the local child support agency returned the funds to the obligor because the local child support agency was unable to locate the obligee and, when the obligee was located, the obligor made full payment for all past due child support amounts.

17504. The first fifty dollars ($50) of any amount of child support collected in a month in payment of the required support obligation for that month shall be paid to a recipient of aid under this chapter, except recipients of foster care payments under Article 5 (commencing with Section 11400) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be considered income or resources of the recipient family, and shall not be deducted from the amount of aid to which the family would otherwise be eligible. The local child support agency in each county shall ensure that payments are made to recipients as required by this section.

17505. (a) All state, county, and local agencies shall cooperate with the local child support agency (1) in carrying out Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 concerning the location, seizure, and recovery of abducted, concealed, or detained minor children, (2) in the enforcement of any child support obligation or to the extent required under the state plan under Chapter 6 (commencing with Section 4800) of Part 5 of Division 9, Section 270 of the Penal Code, and Section 17604, and (3) the enforcement of spousal support orders and in the location of parents or putative parents. This subdivision applies irrespective of whether the children are or are not receiving aid to families with dependent children.

(b) On request, all state, county, and local agencies shall supply the local child support agency of any county in this state or the California Parent Locator Service with all information on hand relative to the location, income, or property of any parents, putative parents, spouses, or former spouses, notwithstanding any other provision of law making the information confidential, and with all information on hand relative to the location and prosecution of any person who has, by means of false statement or representation or by impersonation or other fraudulent device, obtained aid for a child under this chapter.

(c) The State Department of Social Services' Statewide Automated Child Support System, or its replacement, shall be entitled to the same cooperation and information provided to the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System, or its replacement, shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(d) Information exchanged between the California Parent Locator Service or the Statewide Automated Child Support System, or its replacement, and state, county, or local agencies as specified in Section 666(c)(1)(D) of Title 42 of the United State Code shall be through automated processes to the maximum extent feasible.

17506. (a) There is in the Department of Justice the California Parent Locator Service and Central Registry that shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

(1) The full and true name of the parent together with any known aliases.

(2) Date and place of birth.

(3) Physical description.

(4) Social security number.

(5) Employment history and earnings.

(6) Military status and Veterans Administration or military service serial number.

(7) Last known address, telephone number, and date thereof.

(8) Driver's license number, driving record, and vehicle registration information.

(9) Criminal, licensing, and applicant records and information.

(10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, and the address, telephone number, and social security information obtained from a public utility or cable television corporation that may be of assistance in locating the parent, putative parent, abducting, concealing, or detaining parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 17604.

(B) For purposes of this subdivision, "income tax return information" means all of the following regarding the taxpayer:

(i) Assets.

(ii) Credits.

(iii) Deductions.

(iv) Exemptions.

(v) Identity.

(vi) Liabilities.

(vii) Nature, source, and amount of income.

(viii) Net worth.

(ix) Payments.

(x) Receipts.

(xi) Address.

(xii) Social security number.

(b) To effectuate the purposes of this section, the Statewide Automated Child Support System, or its replacement, the California

Parent Locator Service and Central Registry, and the Franchise Tax Board shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data that will enable the Department of Child Support Services, the Department of Justice, and other public agencies to carry out their powers and duties to locate parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to enforce liability for child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any district attorney in fulfilling the duties prescribed in Section 270 of the Penal Code, and in Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of this code, relating to abducted, concealed, or detained children. The Statewide Automated Child Support System, or its replacement, shall be entitled to the same cooperation and information as the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System, or its replacement, shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

(c) (1) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the Statewide Automated Child Support System, or its replacement, may request and shall receive from public utilities, as defined in Section 216 of the Public Utilities Code, and cable television corporations, as defined in Section 215.5 of the Public Utilities Code, customer service information, including the full name, address, telephone number, date of birth, employer name and address, and social security number of customers of the public utility or the cable television corporation, to the extent that this information is stored within the computer data base of the public utility or the cable television corporation.

(2) In order to protect the privacy of utility and cable television customers, a request to a public utility or cable television corporation for customer service information pursuant to this section shall meet the following requirements:

(A) Be submitted to the public utility or cable television corporation in writing, on a transmittal document prepared by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System, or its replacement, and approved by all of the public utilities and cable television corporations. The transmittal shall be deemed to be an administrative subpoena for customer service information.

(B) Have the signature of a representative authorized by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System, or its replacement.

(C) Contain at least three of the following data elements regarding the person sought:

(i) First and last name, and middle initial, if known.

(ii) Social security number.

(iii) Driver's license number.

(iv) Birth date.

(v) Last known address.

(vi) Spouse's name.

(D) The California Parent Locator Service and Central Registry and the Statewide Automated Child Support System, or its replacement, shall ensure that each public utility and cable television corporation has at all times a current list of the names of persons authorized to request customer service information.

(E) The California Statewide Automated Child Support System, or its replacement, and the California Parent Locator Service and Central Registry shall ensure that customer service information supplied by a public utility or cable television corporation is applicable to the person who is being sought before releasing the information pursuant to subdivision (d).

(3) The public utility or cable television corporation may charge a fee to the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System, or its replacement, for each search performed pursuant to this subdivision to cover the actual costs to the public utility or cable television corporation for providing this information.

(4) No public utility or cable television corporation, or official or employee thereof, shall be subject to criminal or civil liability for the release of customer service information as authorized by this subdivision.

(d) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Justice, the Statewide Automated Child Support System or its replacement, the California Parent Locator Service and Central Registry, the parent locator services and central registries of other states as defined by federal statutes and regulations, a district attorney of any county in this state, the federal Parent Locator Service, the Department of Child Support Services, and local child support agencies. The Statewide Automated Child Support Enforcement System, or its replacement, shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(e) (1) At no time shall any information received by the California Parent Locator Service and Central Registry or by the Statewide Automated Child Support System, or its replacement, be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 17505, this section, or any other provision of law.

(2) This subdivision shall not otherwise affect discovery between parties in any action to establish, modify, or enforce child, family, or spousal support, that relates to custody or visitation.

(f) (1) The Department of Justice, in consultation with the Department of Child Support Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service and Central Registry.

(2) The Department of Child Support Services, the Public Utilities Commission, and the cable television corporations shall develop procedures for obtaining the information described in subdivision (c) from public utilities, and for compensating the public utilities and cable television corporations for providing that information.

(g) The California Parent Locator Service and Central Registry may charge a fee not to exceed eighteen dollars ($18) for any service it provides pursuant to this section that is not performed or funded pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(h) This section shall be construed in a manner consistent with the other provisions of this article.

17508. The Employment Development Department shall, when requested by the Department of Child Support Services, the Franchise Tax Board for purposes of administering Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, the federal Parent Locator Service, or the California Parent Locator Service, provide access to information collected pursuant to Section 1088.5 of the Unemployment Insurance Code to the requesting department or agency for purposes of administering the child support enforcement program, and for purposes of verifying employment of applicants and recipients of aid under this chapter or food stamps under Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the Welfare and Institutions Code.

17510. To assist local agencies in child support enforcement activities, the department shall operate a workers' compensation notification project based on information received pursuant to Section 138.5 of the Labor Code or any other source of information.

17512. (a) Upon receipt of a written request from a local child support agency enforcing the obligation of parents to support their children pursuant to Section 17400, or from an agency of another state enforcing support obligations pursuant to Section 654 of Title 42 of the United States Code, every employer, as specified in Section 5210, and every labor organization shall cooperate with and provide relevant employment and income information that they have in their possession to the local child support agency or other requesting agency for the purpose of establishing, modifying, or enforcing the support obligation. No employer or labor organization shall incur any

liability for providing this information to the local child support agency or other requesting agency.

(b) Relevant employment and income information shall include, but not be limited to, all of the following:

(1) Whether a named person has or has not been employed by an employer or whether a named person has or has not been employed to the knowledge of the labor organization.

(2) The full name of the employee or member or the first and middle initial and last name of the employee or member.

(3) The employee's or member's last known residence address.

(4) The employee's or member's date of birth.

(5) The employee's or member's social security number.

(6) The dates of employment.

(7) All earnings paid to the employee or member and reported as W-2 compensation in the prior tax year and the employee's or member's current basic rate of pay.

(8) Other earnings, as specified in Section 5206, paid to the employee or member.

(9) Whether dependent health insurance coverage is available to the employee through employment or membership in the labor organization.

(c) The local child support agency or other agency shall notify the employer and labor organization of the local child support agency case file number in making a request pursuant to this section. The written request shall include at least three of the following elements regarding the person who is the subject of the inquiry: (A) first and last name and middle initial, if known; (B) social security number; (C) driver's license number; (D) birth date; (E) last known address; or (F) spouse's name.

(d) The local child support agency or other requesting agency shall send a notice that a request for this information has been made to the last known address of the person who is the subject of the inquiry.

(e) An employer or labor organization that fails to provide relevant employment information to the local child support agency or other requesting agency within 30 days of receiving a request pursuant to subdivision (a) may be assessed a civil penalty of a maximum of one thousand dollars ($1,000), plus attorneys' fees and costs. Proceedings to impose the civil penalty shall be commenced by the filing and service of an order to show cause.

(f) "Labor organization," for the purposes of this section means a labor organization as defined in Section 1117 of the Labor Code or any related benefit trust fund covered under the federal Employee Retirement Income Security Act of 1974 (Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code).

(g) Any reference to the local child support agency in this section shall apply only when the local child support agency is otherwise ordered or required to act pursuant to existing law. Nothing in this

section shall be deemed to mandate additional enforcement or collection duties upon the local child support agency beyond those imposed under existing law on the effective date of this section.

17514. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child abduction and recovery programs, by ensuring the confidentiality of child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 17400, and Chapter 6 (commencing with Section 4800) of Part 5 of Division 9.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in this subdivision, all files, applications, papers, documents, and records, established or maintained by any public entity for the purpose of locating an abducted child, locating a person who has abducted a child, or prosecution of a person who has abducted a child shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with locating or recovering the abducted child or abducting person or prosecution of the abducting person.

(2) Except as provided in subdivision (c), no public entity shall disclose any file, application, paper document, or record described in this section, or the information contained therein.

(c) (1) All files, 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 prosecution conducted in connection with the child abduction or prosecution of the abducting person.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) Public records subject to disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code may be released.

(4) After a noticed motion and a finding by the court, in a case in which child recovery or abduction prosecution actions are being taken, that release or disclosure is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record described in this subdivision to make that item

available to the defendant or other party for examination or copying, or to disclose to an appropriate person the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 8 of the Evidence Code shall not be applicable to proceedings under this part.

(5) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a minor child, or location of a concealed or abducted child or the location of the concealing or abducting person, may be disclosed to any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(6) Information may be released to any state or local agency for the purposes connected with establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity as required by Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

17516. In no event shall public social service benefits, as defined in Section 10051 of the Welfare and Institutions Code, or benefits paid pursuant to Title XVI of the Social Security Act be employed to satisfy a support obligation.

17518. (a) As authorized by subdivision (d) of Section 704.120 of the Code of Civil Procedure, the following actions shall be taken in order to enforce support obligations that are not being met. Whenever a support judgment or order has been rendered by a court of this state against an individual who is entitled to any unemployment compensation benefits or unemployment compensation disability benefits, the local child support agency may file a certification of support judgment or support order with the Department of Child Support Services, verifying under penalty of perjury that there is or has been a judgment or an order for support with sums overdue thereunder. The department shall periodically present and keep current, by deletions and additions, a list of the certified support judgments and orders and shall periodically notify the Employment Development Department of individuals certified as owing support obligations.

(b) If the Employment Development Department determines that an individual who owes support may have a claim for unemployment compensation disability insurance benefits under a voluntary plan approved by the Employment Development Department in accordance with Chapter 6 (commencing with Section 3251) of Part 2 of Division 1 of the Unemployment Insurance Code, the Employment Development Department shall immediately notify the voluntary plan payer. When the department notifies the Employment Development Department of changes in an individual's support obligations, the Employment Development Department shall promptly notify the voluntary plan payer of these

changes. The Employment Development Department shall maintain and keep current a record of individuals who owe support obligations who may have claims for unemployment compensation or unemployment compensation disability benefits.

(c) Notwithstanding any other law, the Employment Development Department shall withhold the amounts specified below from the unemployment compensation benefits or unemployment compensation disability benefits of individuals with unmet support obligations. The Employment Development Department shall periodically forward the amounts to the Department of Child Support Services for distribution to the appropriate certifying county.

(d) Notwithstanding any other law, during the payment of unemployment compensation disability benefits to an individual, with respect to whom the Employment Development Department has notified a voluntary plan payer that the individual has a support obligation, the voluntary plan payer shall withhold the amounts specified below from the individual's unemployment compensation disability benefits and shall periodically forward the amounts to the appropriate certifying county.

(e) The amounts withheld in subdivisions (c) and (d) shall be equal to 25 percent of each weekly unemployment compensation benefit payment or periodic unemployment compensation disability benefit payment, rounded down to the nearest whole dollar, which is due the individual identified on the certified list. However, the amount withheld may be reduced to a lower whole dollar amount through a written agreement between the individual and the local child support agency or through an order of the court.

(f) The department shall ensure that the appropriate certifying county shall resolve any claims for refunds in the amounts overwithheld by the Employment Development Department or voluntary plan payer.

(g) No later than the time of the first withholding, the individuals who are subject to the withholding shall be notified by the payer of benefits of all of the following:

(1) That his or her unemployment compensation benefits or unemployment compensation disability benefits have been reduced by a court-ordered support judgment or order pursuant to this section.

(2) The address and telephone number of the local child support agency that submitted the certificate of support judgment or order.

(3) That the support order remains in effect even though he or she is unemployed or disabled unless it is modified by court order, and that if the amount withheld is less than the monthly support obligation, an arrearage will accrue.

(h) The individual may ask the appropriate court for an equitable division of the individual's unemployment compensation or unemployment compensation disability amounts withheld to take

into account the needs of all the persons the individual is required to support.

(i) The Department of Child Support Services and the Employment Development Department shall enter into any agreements necessary to carry out this section.

(j) For purposes of this section, "support obligations" means the child and related spousal support obligations that are being enforced pursuant to a plan described in Section 454 of the Social Security Act and as that section may hereafter be amended. However, to the extent "related spousal support obligation" may not be collected from unemployment compensation under federal law, those obligations shall not be included in the definition of support obligations under this section.

17520. (a) As used in this section:

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

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

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

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the

local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.

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

(6) "Licensee" means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles, any person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term.

(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social

security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.

(c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.

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

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

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

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

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

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

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

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

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

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

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

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

(f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

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

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

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

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

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

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

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

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send

notice of its findings to the applicant within 75 days. This paragraph applies only if the delay in completing the review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving notice from the board that his or her name is on the list.

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

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

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

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

(1) Judicial review of the local child support agency's decision not to issue a release.

(2) A judicial determination of compliance.

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

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

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

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is

requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

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

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

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

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

(B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

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

(*l*) The department shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support.

If the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support agency may notify the board, the obligor, and the department in a format prescribed by the department that the obligor is not in compliance.

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

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

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the

State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (*l*).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of

Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

17522. (a) Notwithstanding any other law, if any support obligor is delinquent in the payment of support for at least 30 days and the local child support agency is enforcing the support obligation pursuant to Section 17400, the local child support agency 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 local child support agency for a support obligation that 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 local child support agency 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 the 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 17526 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 local child support agency 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 local child support agency 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 local child support agency or pay to the local child support agency 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 local child support agency 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 local child support agency 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 local child support agency 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 local child support agency may issue a warrant for enforcement of any lien and for the collection of any amount required to be paid to the local child support agency 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 local child support agency 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

a district attorney is exempt by law from paying. The local child support agency, 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.

17524. (a) Upon making application to the local child support agency for child support enforcement services pursuant to Section 17400, every applicant shall be requested to give the local child support agency a statement of arrearages stating whether any support arrearages are owed. If the applicant alleges arrearages are owed, the statement shall be signed under penalty of perjury.

(b) For all cases opened by the district attorney or local child support agency after December 31, 1995, the local child support agency shall enforce only arrearages declared under penalty of perjury pursuant to subdivision (a), arrearages accrued after the case was opened, or arrearages determined by the court in the child support action. Arrearages may be determined by judgment, noticed motion, renewal of judgment, or registration of the support order.

(c) For all cases opened by the district attorney on or before December 31, 1995, the local child support agency shall enforce only arrearages that have been based upon a statement of arrearages signed under penalty of perjury or where the local child support agency has some other reasonable basis for believing the amount of claimed arrearages to be correct.

17526. (a) Upon request of an obligor or obligee, the local child support agency shall, within 30 days, review the amount of arrearages alleged in a statement of arrearages that may be submitted to the local child support agency by an applicant for child support enforcement services. In the review, the local child support agency shall consider all evidence and defenses submitted by either parent on the issues of the amount of support paid or owed. The local child support agency may continue the administrative review as necessary to obtain additional information.

(b) The local child support agency may, in its discretion, suspend enforcement or distribution of arrearages if it believes there is a substantial probability that the result of the administrative review will result in a finding that there are no arrearages.

(c) Any party to an action involving child support enforcement services of the local child support agency may request a judicial determination of arrearages. The party may request an administrative review of the alleged arrearages prior to requesting a judicial determination of arrearages. Any motion to determine arrearages filed with the court shall include a monthly breakdown

showing amounts ordered and amounts paid, in addition to any other relevant information.

(d) A county that submits a claim for reimbursement as a state-mandated local program of costs incurred with respect to the administrative review of alleged child support arrearages under this section shall be ineligible for state subventions or, to the extent permitted by federal law, state-administered federal subventions, for child support in the amount of any local costs under this section.

17528. (a) As authorized by subdivision (c) of Section 704.110 of the Code of Civil Procedure, the following actions shall be taken in order to enforce support obligations that are not being met:

(1) Within 18 months of implementation of the Statewide Automated Child Support System (SACSS), or its replacement as prescribed by former Section 10815 of the Welfare and Institutions Code, and certification of SACSS or its replacement by the United States Department of Health and Human Services, the department shall compile a file of all support judgments and orders that are being enforced by local child support agencies pursuant to Section 17400 that have sums overdue by at least 60 days or by an amount equal to 60 days of support.

(2) The file shall contain the name and social security number of the person who owes overdue support, the amount of overdue support as of the date the file is created, the name of the county in which the support obligation is being enforced by the local child support agency, and any other information that is deemed necessary by the department and the Public Employees' Retirement System.

(3) The department shall provide the certified file to the Public Employees' Retirement System for the purpose of matching the names in the file with members and beneficiaries of the Public Employees' Retirement System that are entitled to receive Public Employees' Retirement System benefits. The department and the Public Employees' Retirement System shall work cooperatively to develop an interface in order to match the names in their respective electronic data processing systems. The interface required to intercept benefits that are payable periodically shall be done as soon as it is technically feasible.

(4) The department shall update the certified file no less than on a monthly basis to add new cases within the local child support agencies or existing cases that become delinquent and to delete persons who are no longer delinquent. The department shall provide the updated file no less than on a monthly basis to the Public Employees' Retirement System.

(5) Information contained in the certified file provided to the Public Employees' Retirement System by the department and the local child support agencies and information provided by the Public Employees' Retirement System to the department shall be used exclusively for child support enforcement purposes and may not be used for any other purpose.

(b) Notwithstanding any other provision of law, the Public Employees' Retirement System shall withhold the amount certified from the benefits and refunds to be distributed to members with overdue support obligations or from benefits to be distributed to beneficiaries with overdue support obligations. If the benefits are payable periodically, the amount withheld pursuant to this section shall not exceed the amount permitted to be withheld for an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

(c) The Public Employees' Retirement System shall forward the amounts withheld pursuant to subdivision (b) within 10 days of withholding to the department for distribution to the appropriate county.

(d) On an annual basis, the department shall notify individuals with overdue support obligations that PERS benefits or PERS contribution refunds may be intercepted for the purpose of enforcing family support obligations.

(e) No later than the time of the first withholding, the Public Employees' Retirement System shall send those persons subject to withholding the following:

(1) Notice that his or her benefits or retirement contribution refund have been reduced by payment on a support judgment pursuant to this section.

(2) A form developed by the department that the applicant shall use to request either a review by the local child support agency or a court hearing, as appropriate.

(f) The notice shall include the address and telephone number of the local child support agency that is enforcing the support obligation pursuant to Section 17400, and shall specify that the form requesting either a review by the local child support agency or a court hearing must be received by the local child support agency within 20 days of the date of the notice.

(g) The form shall include instructions that are designed to enable the member or beneficiary to obtain a review or a court hearing as appropriate on his or her own behalf. The form shall specify that if the member or beneficiary disputes the amount of support arrearages certified by the local child support agency pursuant to this section, he or she may request a review by the local child support agency.

(h) The department shall develop procedures that are consistent with this section to be used by each local child support agency in conducting the requested review. The local child support agency shall complete the review in accordance with the procedures developed by the department and shall notify the member or beneficiary of the result of the review within 20 days of receiving the request for review. The notification of review results shall include a request for hearing form and shall inform the member or beneficiary that if he or she returns the completed request for hearing form

within 20 days of the date of the notice of review results, the local child support agency shall calendar the matter for court review. If the local child support agency cannot complete the review within 20 days, the local child support agency shall calendar the matter for hearing as specified in subdivision (k).

(i) The form specified in subdivision (g) shall also notify the member or beneficiary that he or she may request a court hearing to claim an exemption of any benefit not payable periodically by returning the completed form to the local child support agency within 20 days. If the local child support agency receives a timely request for a hearing for a claim of exemption, the local child support agency shall calendar a court hearing. The amount of the exemption, if any, shall be determined by the court in accordance with the procedures set forth in Section 703.070 of the Code of Civil Procedure.

(j) If the local child support agency receives the form requesting either a review by the local child support agency or a court hearing within the 20 days specified in subdivision (f), the local child support agency shall not distribute the amount intercepted until the review by the local child support agency or the court hearing is completed. If the local child support agency determines that all or a portion of the member's or beneficiary's benefits were intercepted in error, or if the court determines that any amount of the benefits are exempt, the local child support agency shall refund any amount determined to be exempt or intercepted in excess of the correct amount to the member or beneficiary within 10 days of determination that a refund is due.

(k) Any hearing properly requested pursuant to this section shall be calendared by the local child support agency. The hearing shall be held within 20 days from the date that the local child support agency receives the request for hearing. The local child support agency shall provide notice of the time and place for hearing by first-class mail no later than five days prior to the hearing.

(*l*) Nothing in this section shall limit any existing rights of the member or beneficiary, including, but not limited to, the right to seek a determination of arrearages or other appropriate relief directly from the court. However, if the procedures of this section are not utilized by the member or beneficiary, the court may not require the local child support agency to refund any money that was distributed to the child support obligee prior to the local child support agency receiving notice of a court determination that a refund is due to the member or beneficiary.

(m) The Department of Child Support Services and the Public Employees' Retirement System shall enter into any agreement necessary to implement this section which shall include provisions for the department to provide funding to the Public Employees' Retirement System to develop, implement, and maintain the intercept process described in this section.

(n) The Public Employees' Retirement System may not assess service charges on members or beneficiaries in order to recover any administrative costs resulting from complying with this section.

Article 3. Program Compliance

17600. (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 17704 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 statewide automated system, 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 17704, information on the local child support agency 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, in addition to the information required by subdivision (b), the Department of Child Support Services shall collect, on a monthly basis, from each county that is participating in the state incentive program described in Section 17704, 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 local child support agency 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 local child support agency 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 local child support agency 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, or at the time that the department determines that compliance with this subdivision is possible, each county that is participating in the state incentive program described in Section 17704 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 local child support agencies are unable to accurately collect and report the information or that collecting and reporting of the data by the local child support agencies 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 are 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 local child support agency.

(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 local child support agencies 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 2000–01 fiscal year to each member of a county board of supervisors, county executive officer, local child support agency, and the appropriate policy committees and fiscal committees of the Legislature by December 31, 2001. 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 17704 requires participating counties to report data to the department.

17602. (a) Not later than January 1, 2001, the department shall adopt performance standards that each local child support agency is required to comply with on a quarterly basis. The performance standards shall include, at a minimum, measurements for each of the following:

(1) Percent of cases with a court order for current support.

(2) Percent of cases with collections of current support.

(3) Average amount collected per case for all cases with collections.

(4) Percent of cases with an order for arrears.

(5) Percent of cases with arrears collections.

(6) Percent of alleged fathers or obligors who were served with a summons and complaint to establish paternity or a support order during the period.

(7) Percent of children for whom paternity has been established during the period.

(8) Percent of cases that had a support order established during the period.

(9) Total child support dollars collected per $1.00 of total expenditure.

(10) Any other measurements that the director determines to be an appropriate determination of a local child support agency's performance.

(b) The department shall use the performance-based data, and the criteria for that data, as set forth in Section 17600 to determine a local child support agency's performance measures for the quarter.

(c) The director shall adopt a three phase process to be used statewide when a local child support agency is out of compliance with the performance standards adopted pursuant to subdivision (a), or the director determines that the local child support agency is failing in a substantial manner to comply with any provision of the state plan, the provisions of this code, the requirements of federal law, the regulations of the department, or the cooperative agreement. The director shall adopt policies as to the implementation and duration of each phase, however, the total combined duration of Phases I and II shall not exceed 12 months. The phases shall include the following:

(1) Phase I: Development of a performance improvement plan that is prepared jointly by the local child support agency and the department, subject to the department's final approval. The plan shall provide performance expectations and goals for achieving compliance with the state plan and other state and federal laws and regulations that must be obtained within specific timeframes in order to avoid execution of Phase II.

(2) Phase II: Onsite investigation, evaluation and oversight of the local child support agency by the department. The director shall appoint program monitoring teams to make site visits, conduct educational and training sessions, and help the local child support agency identify and attack problem areas. The program monitoring teams shall evaluate all aspects of the functions and performance of the local child support agency, including compliance with state and federal laws and regulations. Based on these investigations and evaluations, the program monitoring team shall develop a final performance improvement plan and shall oversee implementation of all recommendations made in the plan. The local child support agency shall adhere to all recommendations made by the program monitoring team. The plan shall provide performance expectations and compliance goals that must be obtained within specific timeframes in order to avoid execution of Phase III.

(3) Phase III: The director shall assume, either directly or through agreement with another entity, responsibility for the management of the child and spousal support enforcement program in the county until such time as the local child support agency provides reasonable assurances to the director of its intention and ability to comply. During the period of state management responsibility, the director or his or her authorized representative shall have all of the powers and responsibilities of the local child support agency concerning the administration of the program. The local child support agency shall be responsible for providing any funds as may be necessary for the continued operation of the program. If the local child support agency fails or refuses to provide these funds, including a sufficient amount to reimburse any and all costs incurred by the department in managing the program, the Controller may deduct an amount certified by the director as necessary for the continued operation of the program by the department from any state or federal funds payable to the county for any purpose.

(c) The director shall report in writing to the Legislature semiannually, beginning July 1, 2001, on the status of the state child support enforcement program. The director shall submit quarterly reports to the Legislature, Governor and public on progress of all local child support agencies in each performance measure, including identification of the local child support agencies that are out of compliance, the performances measures that they have failed to satisfy, and the corrective action plan that is being taken for each.

17604. (a) (1) If at any time the director considers any public agency, that is required by law, by delegation of the department, or by cooperative agreement to perform functions relating to the state plan for securing child and spousal support and determining paternity, to be failing in a substantial manner to comply with any provision of the state plan, the director shall put that agency on written notice to that effect.

(2) The state plan concerning spousal support shall apply only to spousal support included in a child support order.

(3) In this chapter the term spousal support shall include support for a former spouse.

(b) After receiving notice, the public agency shall have 45 days to make a showing to the director of full compliance or set forth a compliance plan that the director finds to be satisfactory.

(c) If the director determines that there is a failure on the part of that public agency to comply with the provisions of the state plan, or to set forth a compliance plan that the director finds to be satisfactory, or if the State Personnel Board certifies to the director that that public agency is not in conformity with applicable merit system standards under Part 2.5 (commencing with Section 19800) of Division 5 of Title 2 of the Government Code, and that sanctions are necessary to secure compliance, the director shall withhold part or all of state and federal funds, including incentive funds, from that

public agency until the public agency shall make a showing to the director of full compliance.

(d) After sanctions have been invoked pursuant to subdivision (c), if the director determines that there remains a failure on the part of the public agency to comply with the provisions of the state plan, the director may remove that public agency from performing any part or all of the functions relating to the state plan.

(e) Notwithstanding Sections 15200 and 15204.2 of the Welfare and Institutions Code, in the event of a federal statewide child support program audit, review, or other measure of program compliance or performance which results in the reduction of federal funding for the Title IV-A program, the state shall fund 100 percent of the federal reduction to ensure the continuation of funding for allowable aid payments and related administrative costs associated with the CalWORKs program.

(f) In the event of a federal determination to reduce or modify federal funding for the Title IV-A program as a result of improper or inadequate county administration of the child and spousal support enforcement program, the department shall pass on to the counties any federal sanction levied on or after January 1, 1991, regardless of the date of the underlying federal audit, except for any sanctions resulting from the 1986 audit or federal followup. For the purposes of this section, the date of levy is the date the federal government actually reduces, withholds, or otherwise modifies the state's funding.

(g) The sanction shall be assessed as follows:

(1) The state shall assume responsibility for 50 percent of the total federal sanction.

(2) Each county shall be assessed an amount equal to the amount of increased county costs which would occur based on application of Sections 15200 and 15204.2 of the Welfare and Institutions Code.

(3) For each county found to be out of compliance based on the reviews conducted pursuant to Section 17702, the county shall be assessed an amount equal to one-half the rate of the federal sanction multiplied by the county's total federal Title IV-A program funding.

(4) For each county found to be marginally in compliance based on the reviews conducted pursuant to Section 17702, the county shall be assessed an amount equal to one-quarter the rate of the federal sanction multiplied by the county's total federal Title IV-A program funding.

(5) In the event the amount of the federal sanction is less than the amount required to apply paragraphs (1), (2), (3), and (4), county liability under paragraph (4) shall be reduced accordingly. In the event county liability under paragraph (4) is eliminated and the amount of the federal sanction is less than the amount required to apply paragraphs (1), (2), and (3), county liability under paragraph (3) shall be reduced accordingly.

(6) The review pursuant to Section 17702 which was conducted closest to the date the federal sanction was levied shall be used to

determine which counties are out of compliance and marginally in compliance.

(h) There shall be established a sanction credit which shall consist of any net increase in state revenue resulting from any increase of more than 9 $^{3}/_{4}$ percent in distributed collections on behalf of families receiving CalWORKs for each of the previous three state fiscal years.

(1) The balance of the sanction after application of subdivision (g) shall be reduced by the amount of the sanction credit.

(2) In the event the sanction credit exceeds the balance of the sanction after application of paragraph (1), the amount exceeding the balance shall be used to reduce the liability of marginally compliant counties under paragraph (4) of subdivision (g). Any further balance shall be used to reduce the liability of out-of-compliance counties under paragraph (3) of subdivision (g).

(3) In the event the sanction credit does not fully offset the balance of the sanction after application of paragraph (1), the state shall be responsible for 50 percent of the unmet balance, and the remaining 50 percent shall be distributed to all counties in proportion to their total Title IV-A program funding.

(i) The sanction assessed a county pursuant to this section shall be levied as a general assessment against the county. Notwithstanding Section 17714, a county may use any funds paid to that county pursuant to Sections 17700 and 17710, over and above the county's cost of administering the child support program to supplant any county funds reduced under this section.

(j) In the event of any other audit or review that results in the reduction or modification of federal funding for the program under Part D (commencing with Section 652) of Subchapter IV of Title 42 of the United States Code, the sanction shall be assessed against those counties specifically cited in the federal findings in the amount cited in those findings.

(k) The department shall establish a process whereby any county assessed a portion of any sanction may appeal the department's decision.

(*l*) Nothing in this section shall be construed as relieving the board of supervisors of the responsibility to provide funds necessary for the continued operation of the state plan as required by law.

Article 4. Program Costs

17702. (a) The department shall assess on at least an annual basis each county's compliance with federal and state child support laws and regulations in effect for the time period being reviewed, using a statistically valid sample of cases. The information for the assessment shall be based on reviews conducted by either state or county staff, as determined by the department.

(1) A county shall be eligible for the state incentives under Section 17704 only if the department determines that the county is in

compliance with all federal and state laws and regulations or if the county has a corrective action plan in place that has been certified by the department pursuant to this subdivision. If a county is determined not to be in compliance in any compliance issue reviewed, or, after December 31, 1998, if a county fails to have a statistically valid sample of cases for any compliance issue reviewed, and fails to achieve substantial compliance with the cases actually reviewed in that compliance issue, the county may develop and submit a corrective action plan to the department. The department shall certify a corrective action plan if the department determines that the plan will put the county into compliance with federal and state laws and regulations and the county remains in compliance with the corrective action plan. A county shall be eligible for state incentives under Section 17704 only for any quarter the county remains in compliance with a corrective action plan that has been certified by the department.

(2) Counties under a corrective action plan shall be assessed on a quarterly basis until the department determines that they are in compliance with federal and state child support program requirements.

(b) The department shall collect information regarding whether cases on behalf of families receiving CalWORKs are disproportionately represented in the portion of each county's case sample that is not in compliance. In the event disproportionate representation is found in a county's pool of noncompliant cases, the department shall require corrective action from that county. However, this corrective action may not affect the county's right to incentives.

(c) This section shall become operative on July 1, 1998.

17704. (a) For the 1998–99 fiscal year the department shall pay to each county a child support incentive payment. Every county shall receive the federal child support incentive. A county shall receive the state child support incentive if it elects to do both of the following:

(1) Comply with the reporting requirements of Section 17600 while federal financial participation is available for collecting and reporting data.

(2) Comply with federal and state child support laws and regulations, or has a corrective action plan certified by the department pursuant to Section 17702. The combined federal and state incentive payment shall be 13.6 percent of distributed collections. If the amount appropriated by the Legislature for the state incentives is less than the amount necessary to satisfy each county's actual incentives pursuant to this section, each county shall receive its proportional share of incentives.

(b) (1) Beginning July 1, 1999, the department shall pay to each county a child support incentive for child support collections. Every county shall receive the federal child support incentive. The combined federal and state incentive payments shall be 13.6 percent

of distributed collections. In addition to the federal child support incentive, each county may also receive a state child support incentive. Subject to subdivision (c), a county shall receive the state child support incentive if it elects to do both of the following:

(A) Comply with the reporting requirements of Section 17600 while federal financial participation is available for collecting and reporting data.

(B) Be in compliance with federal and state child support laws and regulations, or have a performance improvement plan certified by the department pursuant to Section 17702.

(2) (A) For purposes of paragraph (1), the federal incentive component shall be each county's share of the child support incentive payments that the state receives from the federal government, based on the county's collections.

(B) (i) Effective July 1, 1999, and annually thereafter, state funds appropriated for child support incentives shall first be used to fund the administrative costs incurred by local child support agencies in administering the child support program, after subtracting all federal financial participation for administrative costs and all federal child support incentives received by the state and passed on to the local child support agencies. The department shall allocate sufficient resources to each local child support agency to fully fund the remaining administrative costs of its budget as approved by the director pursuant to paragraph (9) of subdivision (b) of Section 17306, subject to the appropriation of funding in the annual Budget Act. No later than January 1, 2000, the department shall identify allowable administrative costs that may be claimed for reimbursement from the state, which shall be limited to reasonable amounts in relation to the scope of services and the total funds available. If the total amount of administrative costs claimed in any year exceeds the amount appropriated in the Budget Act, the amount provided to local child support agencies shall be reduced by the percentage necessary to ensure that projected General Fund expenditures do not exceed the amount authorized in the Budget Act.

(ii) Effective July 1, 2000, and annually thereafter, after allowable administrative costs are funded under clause (i), the department shall use any remaining incentive funds appropriated from the prior fiscal year which are hereby reappropriated to implement an incentive program that rewards up to 10 local child support agencies in each year, based on either their welfare and postwelfare collections or their increase in performance over the prior year. The welfare and postwelfare collections standard shall be based on the following for each local child support agency: (I) collections on behalf of previously aided families that received CalWORKs benefits after December 31, 1997, and are no longer receiving benefits divided by the total number of those families; and (II) collections that are used to reduce or repay aid that is paid pursuant to Article 6

(commencing with Section 11450) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, divided by the total aid paid out by the county under that article. The performance improvement standard shall measure the percent improvement for each local child support agency in the two categories of collections over the prior year. The department shall determine the number of local agencies that receive state incentive funds under this program, subject to a maximum of five agencies under the welfare and postwelfare standard and five agencies under the increase in performance over the prior year standard, and shall determine the amount received by each local agency based on the availability of funds and each local child support agency's proportional share of distributed collections.

(iii) Any funds received pursuant to this subdivision shall be used only for child support enforcement activities.

(c) (1) Beginning October 1, 1999, any county whose welfare performance score is in the bottom quartile of all counties and whose rate of improvement over the prior year is less than the rate of improvement of the top quartile counties shall receive its state incentive only upon accepting technical assistance from the department, as set forth in paragraph (3).

(2) The welfare performance score for each county is calculated by dividing the county's collections on behalf of children receiving CalWORKs benefits pursuant to Article 6 (commencing with Section 11450) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code by the county's average CalWORKs caseload.

(3) The department, in consultation with experts from other counties, as appropriate, shall conduct a program review of the county's child support program, which shall include a review of the county's management practices, and provide technical assistance. If the county chooses to receive its state incentives under this section, the county shall comply with the recommendations of this review.

(d) Each county shall continue to receive its federal child support incentive funding whether or not it elects to participate in the state child support incentive funding program.

(e) The department shall provide incentive funds pursuant to this section only during any fiscal year in which funding is provided for that purpose in the Budget Act.

17706. It is the intent of the Legislature to encourage counties to elevate the visibility and significance of the child support enforcement program in the county. To advance this goal the counties with the 10 highest welfare and postwelfare collections standards pursuant to clause (ii) of subparagraph (B) of paragraph (2) of subdivision (b) of Section 17704 shall receive an additional 5 percent of the state's share of collections that are used to reduce or repay aid that is paid pursuant to Article 6 (commencing with Section 11450) or Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. The counties are encouraged to use the increased

recoupment to continue to increase child support collections in the county.

17708. (a) This section shall apply to any county that elects to participate in the state incentive program described in Section 17704.

(b) Each participating county child support enforcement program shall provide the data required by Section 17600 to the department on a quarterly basis. The data shall be provided no later than 30 days after the end of each quarter.

(c) On and after July 1, 1998, a county shall be required to comply with the provisions of this section only during fiscal years in which funding is provided for that purpose in the Budget Act.

17710. (a) Each county shall be responsible for any administrative expenditures for administering the child support program not covered by federal and state funds.

(b) Notwithstanding subdivision (a), effective July 1, 1991, to June 30, 1992, inclusive, counties shall pay the nonfederal share of the administrative costs of conducting the reviews required under Section 15200.8 of the Welfare and Institutions Code from the savings counties will obtain as a result of the reduction in the maximum aid payments specified in Section 11450. Effective July 1, 1992, to June 30, 1993, inclusive, the state shall pay the nonfederal share of administrative costs of conducting the reviews required under Section 15200.8 of the Welfare and Institutions Code. Funding for county costs after June 30, 1993, shall be subject to the availability of funds in the annual Budget Act.

(c) If the federal government imposes a penalty on California's child support program for the failure to meet the October 1, 1997, deadline for the implementation of an automated child support enforcement system required by the federal Family Support Act of 1988 (P.L. 100-485), no portion of any penalty imposed by the federal government from October 1, 1997, to the date of enactment of the act adding this subdivision shall be assessed against Los Angeles County. Pursuant to this subdivision, any portion of the penalties not allocated to Los Angeles County shall be paid from the General Fund, upon appropriation by the Legislature, and shall not be allocated to any other county.

17712. Notwithstanding subdivision (a) of Section 17708, and to the extent funds are appropriated by the annual Budget Act, funds shall be provided to the Judicial Council for the nonfederal share of costs for the costs of child support commissioners pursuant to Section 4251 and family law facilitators pursuant to Division 14 (commencing with Section 10000). The Judicial Council shall distribute the funds to the counties for the purpose of matching federal funds for the costs of child support commissioners and family law facilitators and related costs. Funds distributed pursuant to this section may also be used to offset the nonfederal share of costs incurred by the Judicial Council for performing the duties specified in Sections 4252 and 10010.

17714. (a) Any funds paid to a county pursuant to this chapter which exceed the county's cost of administering the child support program of the local child support agency pursuant to Section 17400 (hereafter called excess funds) shall be expended by the county only upon that program. All these excess funds shall be deposited by the county into a special fund established by the county for this purpose. Funds to be deposited shall include, but not be limited to, excess incentive funds paid pursuant to Section 17704, but shall not include funds paid pursuant to Section 17706 and all interest earned on deposits in the special fund.

(b) (1) By March 1, 1993, the department shall provide the appropriate policy and fiscal committees of the Legislature with information on the amount of excess funds, if any, accumulated by each county.

(2) Commencing July 1, 1993, all excess funds shall be expended by the county on the support enforcement program of the local child support agency within two fiscal years following the fiscal year of receipt of the funds by the county. Except as provided in subdivision (c), any excess funds paid pursuant to this chapter since July 1, 1992, that the department determines have not been spent within the required two-year period shall revert to the General Fund, and shall be distributed by the department only to counties that have complied with this section. The formula for distribution shall be based on the number of CalWORKs cases within each county.

(3) Not later than June 30, 1994, each county shall expend on the support enforcement program any excess funds accrued from July 1, 1989, to June 30, 1992, inclusive, that have not been expended on the support enforcement program. The funds expended shall be in an amount that is greater than the county's 1991–92 expenditures for the program.

(c) A county that submits to the department a written plan approved by that county's local child support agency for the expenditure of excess funds shall be exempted from the requirements of subdivision (b), if the department determines that the expenditure will be cost-effective and the expenditure plan will require more than the time provided for in subdivision (b) to expend or encumber the funds, or both. Once the department approves a plan pursuant to this subdivision, funds received by a county and designated for an expenditure in the plan shall not be expended by the county for any other purpose without the prior approval of the department.

SEC. 2. Section 12803 of the Government Code is amended to read:

12803. (a) The California Health and Human Services Agency consists of the following departments: Health Services; Mental Health; Developmental Services; Social Services; Alcohol and Drug Abuse; Aging; Employment Development; Rehabilitation; and Community Services and Development.

(b) The agency also includes the Office of Statewide Health Planning and Development and the State Council on Developmental Disabilities.

(c) The Department of Child Support Services is hereby created within the agency commencing January 1, 2000, and shall be the single organizational unit designated as the state's Title IV-D agency with the responsibility for administering the state plan and providing services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations as required by Section 654 of Title 42 of the United States Code. State plan functions shall be performed by other agencies as required by law, by delegation of the department, or by cooperative agreements.

SEC. 3. Section 19271 of the Revenue and Taxation Code is amended to read:

19271. (a) (1) For purposes of this article:

(A) "Child support delinquency" means a delinquency defined in paragraph (3) of subdivision (a) of Section 17400 of the Family Code.

(B) "Earnings" may include the items described in Section 5206 of the Family Code.

(2) In order to manage the growth in the number of delinquencies transferred, the Franchise Tax Board may phase in the transfers over a period of 36 months ending on December 31, 2002. The Legislature anticipates that the Franchise Tax Board's systems necessary to accommodate the augmented collection activities will be operational by July 1, 2001.

(3) At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board shall mail notice of the amount due to the obligated parent at the last known address and advise the obligated parent that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the local child support agency to resolve the disagreement.

(b) (1) (A) Except as otherwise provided in subparagraph (B), when a delinquency is transferred to the Franchise Tax Board pursuant to Section 17400 of the Family Code, the amount of the child support delinquency shall be collected by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes. Any law providing for the collection of a delinquent personal income tax liability shall apply to any delinquency transferred under Section 17400 of the Family Code in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either

inconsistent with a provision of this article or is not relevant to this article.

(B) When a delinquency is transferred to the Franchise Tax Board pursuant to Section 17400 of the Family Code, or at any time thereafter, if the obligated parent owes a delinquent personal income tax liability, the Franchise Tax Board shall not engage in, or shall cease, any involuntary collection action to collect the delinquent personal income tax liability, until the child support delinquency is paid in full. At any time , however, the Franchise Tax Board may mail any other notice to the taxpayer for voluntary payment of the delinquent personal income tax liability if the Franchise Tax Board determines that collection of the delinquent personal income tax liability will not jeopardize collection of the child support delinquency. However, the Franchise Tax Board may engage in the collection of a delinquent personal income tax liability if the obligor has entered into a payment agreement for the child support delinquency and is in compliance with that agreement, and the Franchise Tax Board determines that collection of the delinquent personal income tax liability would not jeopardize payments under the child support payment agreement.

(C) For purposes of subparagraph (B):

(i) "Involuntary collection action" includes those actions authorized by Section 18670, 18670.5, 18671, or 19264, by Article 3 (commencing with Section 19231), or by Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

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

(iii) "Voluntary payment" means any payment made by obligated parents in response to any notice for voluntary payment mailed by the Franchise Tax Board.

(2) Any compensation, fee, commission, expense, or any other fee for service incurred by the Franchise Tax Board in the collection of a child support delinquency authorized under this article shall not be an obligation of, or collected from, the obligated parent. A transferred child support delinquency shall be final and due and payable to the State of California upon written notice to the obligated parent by the Franchise Tax Board.

(3) For purposes of administering this article:

(A) This chapter and Chapter 7 (commencing with Section 19501) shall apply, except as otherwise provided by this article.

(B) Any services, information, or enforcement remedies available to a local child support agency or the Title IV-D agency in collecting child support delinquencies or locating absent or noncustodial parents shall be available to the Franchise Tax Board for purposes of collecting child support delinquencies under this article, including,

but not limited to, any information that may be disclosed by the Franchise Tax Board to the California Parent Locator Service under Section 19548. However, in no event shall the Franchise Tax Board take any additional enforcement remedies if a court has ordered an obligor to make scheduled payments on a child support arrearages obligation and the parent is in compliance with that order.

(C) A request by the Franchise Tax Board for information from a financial institution shall be treated in the same manner and to the same extent as a request for information from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code for purposes of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code (relating to governmental access to financial records), notwithstanding any other provision of law which is inconsistent or contrary to this paragraph.

(D) The amount to be withheld in an order and levy to collect child support delinquencies under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure is the amount required to be withheld pursuant to an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

(E) Nothing in this article shall be construed to modify the tax intercept provisions of Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Part 2 of the Code of Civil Procedure.

(c) Interest on the delinquency shall be computed pursuant to Section 685.010 of the Code of Civil Procedure.

(d) All questions regarding collection actions shall be referred to the Franchise Tax Board, including, but not limited to, situations in which collection action would cause undue financial hardship to the obligated parent, would threaten the health or welfare of the obligated parent or his or her family, or would cause undue irreparable loss to the obligated parent.

(e) (1) In no event shall a collection under this article be construed to be a payment of income taxes imposed under this part.

(2) In the event an obligated parent overpays a liability imposed under this part, the overpayment shall not be credited against any delinquency collected pursuant to this article. In the event an overpayment of a liability imposed under this part is offset and distributed to a local child support agency pursuant to Sections 12419.3 and 12419.5 of the Government Code or Section 708.740 of the Code of Civil Procedure, and thereby reduces the amount of the referred delinquency, the local child support agency shall immediately notify the Franchise Tax Board of that reduction, unless the Franchise Tax Board directs otherwise.

(f) (1) The Franchise Tax Board shall administer this article, in conjunction with guidelines prescribed by the Department of Child Support Services in consultation with the Franchise Tax Board, including those set forth in Section 17306 of the Family Code.

(2) The Franchise Tax Board may transfer to or allow a local child support agency to retain a child support delinquency for enforcement and collection where the Franchise Tax Board determines that the transfer or retention of the delinquency will enhance the collectibility of the delinquency.

(3) The Franchise Tax Board, in coordination with the local child support agency, shall seek full compliance by the obligor with the child support order. The Franchise Tax Board, in coordination with the local child support agency and the Department of Child Support Services, shall pursue resolution of any issues regarding wage assignments and shall modify or replace as necessary any administratively county-issued wage assignments to achieve total resolution of the child support obligation.

(g) Except as otherwise provided in this article, any child support delinquency transferred to the Franchise Tax Board pursuant to this article shall be treated as a child support delinquency for all other purposes, and any collection action by the local child support agency or the Franchise Tax Board with respect to any delinquency referred pursuant to this article shall have the same priority against attachment, execution, assignment, or other collection action as is provided by any other provision of state law.

(h) Except as otherwise specifically provided in subparagraph (B) of paragraph (1) of subdivision (b), the child support collection activities authorized by this article shall not interfere with the primary mission of the Franchise Tax Board to fairly and efficiently administer the Revenue and Taxation Code for which it is responsible.

(i) Information disclosed to the Franchise Tax Board shall be considered information that may be disclosed by the Franchise Tax Board under the authority of Section 19548 and may be disseminated by the Franchise Tax Board accordingly for the purposes specified in Sections 17505 and 17506 of the Family Code (in accordance with, and to the extent permitted by, Section 17514 of the Family Code and any other state or federal law).

(j) A local child support agency may not apply to the Department of Child Support Services for an exemption from the transfer of responsibilities and authorities to the Franchise Tax Board under the Family Code or participation under Section 19271.6.

(k) In no event shall a local child support agency withdraw or rescind the transfer of a child support delinquency transferred to the Franchise Tax Board.

SEC. 4. Section 19271.5 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 19533 of the Revenue and Taxation Code is amended to read:

19533. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by

the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any delinquencies transferred for collection under Article 5 (commencing with Section 19270) of Chapter 5.

(b) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due that are referred for collection under Article 5.5 (commencing with Section 19280) of Chapter 5.

(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.

(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

(i) Payment of delinquencies referred by the Student Aid Commission pursuant to Section 16583.5 of the Government Code.

(j) Notwithstanding the payment priority established by this section, voluntary payments made by a taxpayer designated by the taxpayer as payment for a personal income tax liability, shall not be applied pursuant to this priority, but shall instead be applied solely to the personal income tax liability for which the voluntary payment was made.

SEC. 6. Section 19548 of the Revenue and Taxation Code is amended to read:

19548. (a) The Franchise Tax Board, upon request by the California Parent Locator Service, may disclose to the California Parent Locator Service, pursuant to Section 17505 or 17506 of the Family Code, any taxpayer return information that may be of assistance in locating alleged abducting or absent parents, spouses, or former spouses, in enforcing their liability for child support or the liability for spousal support, in establishing a parent and child relationship, and in locating and returning abducted children to their parents.

(b) Information disclosed to the California Parent Locator Service pursuant to subdivision (a) shall be disseminated by the California Parent Locator Service only as provided for by, and only for the purposes specified in, Section 17505 or 17506 of the Family Code.

SEC. 7. Section 1088.8 is added to the Unemployment Insurance Code, to read:

1088.8. (a) Effective July 1, 2000, any service-recipient, as defined in subdivision (b), who makes or is required to make a return to the Internal Revenue Service, in accordance with paragraph (A) of subdivision (a) of Section 6041 of the Internal Revenue Code

(relating to payments made to a service-provider as compensation for services) shall file with the department information as required under subdivision (c).

(b) For purposes of this section:

(1) "Service-recipient" means any individual, person, corporation, association, or partnership, or agent thereof, doing business in this state, deriving trade or business income from sources within this state, or in any manner in the course of a trade or business subject to the laws of this state. "Service-recipient" also includes the State of California or any political subdivision thereof, including the Regents of the University of California, any charter city, or any political body not a subdivision or agency of the state, and any person, employee, department, or agent thereof.

(2) "Service-provider" means an individual who is not an employee of the service-recipient for California purposes and who received compensation or executes a contract for services performed for that service-recipient within or without the state.

(c) Each service-recipient shall report all of the following information to the department, within 20 days of the earlier of first making payments that in the aggregate equal or exceed six hundred dollars ($600) in any year to a service-provider, or entering into a contract or contracts with a service-provider providing for payments that in the aggregate equal or exceed six hundred dollars ($600) in any year:

(1) The full name and social security number of the service-provider.

(2) The service-recipient's name, business name, address, and telephone number.

(3) The service-recipient's federal employer identification number, California state employer account number, social security number, or other identifying number as required by the Employment Development Department in consultation with the Franchise Tax Board.

(4) The date the contract is executed, or if no contract, the date payments in the aggregate first equal or exceed six hundred dollars ($600).

(5) The total dollar amount of the contract, if any, and the contract expiration date.

(d) The department shall retain information collected pursuant to this section until November 1 following the tax year in which the contract is executed, or if no contract, the tax year in which the aggregate payments first equal or exceed six hundred dollars ($600).

(e) Information obtained by the department pursuant to this section may be released only for purposes of establishing, modifying, or enforcing child support obligations under Section 17400 of the Family Code and for child support collection purposes authorized under Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of the Revenue and Taxation Code, or to the Franchise Tax

Board for tax enforcement purposes or for administering the provisions of the Family Code.

(f) This section shall become operative on July 1, 2000.

SEC. 8. Section 11350 of the Welfare and Institutions Code is repealed.

SEC. 9. Section 11350.1 of the Welfare and Institutions Code is repealed.

SEC. 10. Section 11350.2 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 11350.3 of the Welfare and Institutions Code is repealed.

SEC. 12. Section 11350.4 of the Welfare and Institutions Code is repealed.

SEC. 13. Section 11350.5 of the Welfare and Institutions Code is repealed.

SEC. 14. Section 11350.6 of the Welfare and Institutions Code is repealed.

SEC. 15. Section 11350.7 of the Welfare and Institutions Code is repealed.

SEC. 16. Section 11350.8 of the Welfare and Institutions Code is repealed.

SEC. 17. Section 11350.9 of the Welfare and Institutions Code is repealed.

SEC. 18. Section 11351 of the Welfare and Institutions Code is repealed.

SEC. 19. Section 11352 of the Welfare and Institutions Code is repealed.

SEC. 20. Section 11354 of the Welfare and Institutions Code is repealed.

SEC. 21. Section 11355 of the Welfare and Institutions Code is repealed.

SEC. 22. Section 11356 of the Welfare and Institutions Code is repealed.

SEC. 23. Section 11357 of the Welfare and Institutions Code is repealed.

SEC. 24. Section 11475 of the Welfare and Institutions Code is repealed.

SEC. 25. Section 11475.1 of the Welfare and Institutions Code is repealed.

SEC. 26. Section 11475.15 of the Welfare and Institutions Code is repealed.

SEC. 27. Section 11475.3 of the Welfare and Institutions Code, as added by Chapter 270 of the Statutes of 1997, is amended to read:

11475.3. The first fifty dollars ($50) of any amount of child support collected in a month in payment of the required support obligation for that month shall be paid to a recipient of aid under this chapter, except recipients of foster care payments under Article 5 (commencing with Section 11400) shall not be considered income or

resources of the recipient family, and shall not be deducted from the amount of aid to which the family would otherwise be eligible. The local child support agency in each county shall ensure that payments are made to recipients as required by this section.

SEC. 28. Section 11475.3 of the Welfare and Institutions Code, as added by Chapter 906 of the Statutes of 1994, is repealed.

SEC. 29. Section 11475.4 of the Welfare and Institutions Code is repealed.

SEC. 30. Section 11475.5 of the Welfare and Institutions Code is repealed.

SEC. 31. Section 11475.8 of the Welfare and Institutions Code is repealed.

SEC. 32. Section 11476 of the Welfare and Institutions Code is repealed.

SEC. 33. Section 11476.1 of the Welfare and Institutions Code is repealed.

SEC. 34. Section 11476.6 of the Welfare and Institutions Code is amended to read:

11476.6. Each local child support agency shall submit to the department data revealing the range and median time periods by which notification of the receipt of child support payments collected on behalf of a family receiving aid under this chapter is made to the local welfare department. The data shall contain the number and percentage of cases in which the payments described herein are conveyed within the time period prescribed by federal law. By April 1, 1987, the department shall submit to the appropriate policy and fiscal committees of each house of the Legislature a report detailing and analyzing the data received from the local child support agencies and explaining whatever failure to satisfy the time limits imposed by the federal law is revealed by the data. The report shall also include an estimate of the time by which an accounting of the amounts of child support received and paid to families pursuant to this section can be provided on a monthly basis to those families.

SEC. 35. 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 local child support agency 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 local child support agency 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. 36. Section 11477.02 of the Welfare and Institutions Code is amended to read:

11477.02. Prior to referral of any individual or recipient, or that person's case, to the local child support agency for child support services under Section 11350.1 or 11475.1, the county welfare

department shall determine if an applicant or recipient has good cause for noncooperation, as set forth in Section 11477.04. If the applicant or recipient claims a good cause exception at any subsequent time to the county welfare department or the district attorney, the district attorney shall suspend child support services until the county welfare department determines the good cause claim, as set forth in Section 11477.04. If good cause is determined to exist, the district attorney shall suspend child support services until the applicant or recipient requests their resumption, and shall take such other measures as are necessary to protect the applicant or recipient and the children. If the applicant or recipient is the parent of the child for whom aid is sought and the parent is found to have not cooperated without good cause as provided in Section 11477.04, the applicant's or recipient's family grant shall be reduced by 25 percent for such time as the failure to cooperate lasts.

SEC. 37. Section 11477.04 of the Welfare and Institutions Code is amended to read:

11477.04. (a) An applicant or a recipient shall be considered to be cooperating in good faith with the county welfare department or the local child support agency for purposes of Section 11477 and shall be eligible for aid, if otherwise eligible, if he or she cooperates or has good cause for noncooperation. The county welfare department shall make the good cause determination.

(b) Good cause shall be found if any of the following conditions exist:

(1) Efforts to establish paternity or establish, modify, or enforce a support obligation would increase the risk of physical, sexual, or emotional harm to the child for whom support is being sought.

(2) Efforts to establish paternity or establish, modify, or enforce a support obligation would increase the risk of abuse, as defined in Section 11495.1, to the parent or caretaker with whom the child is living.

(3) The child for whom support is sought was conceived as a result of incest or rape. A conviction for incest or rape is not necessary for this paragraph to apply.

(4) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.

(5) The applicant or recipient is currently being assisted by a public or licensed private adoption agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(6) The applicant or recipient is cooperating in good faith but is unable to identify or assist in locating the alleged father or obligor.

(7) Any other reason that would make efforts to establish paternity or establish, modify, or enforce a support obligation contrary to the best interests of the child.

(c) Evidence supporting a claim for good cause includes, but is not limited to, the following:

(1) Police, governmental agency, or court records, documentation from a domestic violence program or a legal, clerical, medical, mental health, or other professional from whom the applicant or recipient has sought assistance in dealing with abuse, physical evidence of abuse, or any other evidence that supports the claim of good cause.

(2) Statements under penalty of perjury from individuals, including the applicant or recipient, with knowledge of the circumstances that provide the basis for the good cause claim.

(3) Birth certificates or medical, mental health, rape crisis, domestic violence program, or law enforcement records that indicate that the child was conceived as the result of incest or rape.

(4) Court documents or other records that indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.

(5) A written statement from a public or licensed private adoption agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(d) A sworn statement by a victim shall be sufficient to establish abuse unless the agency documents in writing an independent, reasonable basis to find the recipient not credible.

(e) Applicants or recipients who inquire about or claim good cause, or otherwise indicate that they or their children are at risk of abuse, shall be given referrals by the county welfare department to appropriate community, legal, medical, and support services. Followup by the applicant or recipient on those referrals shall not affect eligibility for assistance under this chapter or the determination of cooperation.

SEC. 38. Section 11478 of the Welfare and Institutions Code is repealed.

SEC. 39. Section 11478.2 of the Welfare and Institutions Code is repealed.

SEC. 40. Section 11478.5 of the Welfare and Institutions Code is repealed.

SEC. 41. Section 11478.51 of the Welfare and Institutions Code is repealed.

SEC. 42. Section 11478.6 of the Welfare and Institutions Code is repealed.

SEC. 43. Section 11478.7 of the Welfare and Institutions Code is repealed.

SEC. 44. Section 11478.8 of the Welfare and Institutions Code is repealed.

SEC. 45. Section 11478.9 of the Welfare and Institutions Code is repealed.

SEC. 46. Section 11479 of the Welfare and Institutions Code is amended to read:

11479. In all cases in which the paternity of the child has not been established to the satisfaction of the county department, the county department shall refer the applicant to local child support agency at the time the application is signed. Upon the advice of a county department that a child is being considered for adoption, and regardless of whether or not the whereabouts of the parent is known, the local child support agency shall delay the investigation and other action with respect to the case until advised that the adoption is no longer under consideration. The local child support agency shall conduct such investigation as the agency considers necessary, and where he or she deems it appropriate, the agency may bring an action under Chapter 4 (commencing with Section 7630) of Part 3 of Division 12 of the Family Code. When the cause is at issue, it shall be set for trial at the earliest possible date and shall take precedence over all other cases except older matters of the same character and matters to which precedence may be given by law.

SEC. 47. Section 11479.5 of the Welfare and Institutions Code is repealed.

SEC. 48. Section 11479.6 of the Welfare and Institutions Code is repealed.

SEC. 49. Section 11485 of the Welfare and Institutions Code is amended to read:

11485. If, to the knowledge of the court, aid has been applied for or granted to a child of parents who are engaged in a divorce or separate maintenance action which is pending, or if the court at any stage of the litigation believes that within the near future there is a likelihood that aid will be applied for on behalf of the child, the court shall direct the clerk to notify the local child support agency and the county department of the pending action.

In any case in which aid has been applied for on behalf of the child, and the county department has knowledge that an action for divorce or separate maintenance has been filed, it shall be the duty of the county director to notify the court that aid is being paid or has been applied for, and to furnish to it such information as is available to the county department as to the financial resources of the parents which might be applied to child support.

The enforcement remedies provided the local child support agency under this article shall not preclude the use of any other remedy which he has under the law to enforce this article.

SEC. 50. Section 11488 of the Welfare and Institutions Code is repealed.

SEC. 51. Section 11489 of the Welfare and Institutions Code is repealed.

SEC. 52. Section 11490 of the Welfare and Institutions Code is repealed.

SEC. 53. Section 11491 of the Welfare and Institutions Code is repealed.

SEC. 54. Section 11492 of the Welfare and Institutions Code is repealed.

SEC. 55. Section 11492.1 of the Welfare and Institutions Code is repealed.

SEC. 56. Section 15200.6 of the Welfare and Institutions Code is repealed.

SEC. 57. Section 15200.75 of the Welfare and Institutions Code is repealed.

SEC. 58. Section 15200.81 of the Welfare and Institutions Code is repealed.

SEC. 59. Section 15200.92 of the Welfare and Institutions Code is repealed.

SEC. 60. Section 15200.95 of the Welfare and Institutions Code is repealed.

SEC. 61. Section 15200.96 of the Welfare and Institutions Code is repealed.

SEC. 62. Section 15200.97 of the Welfare and Institutions Code is repealed.

SEC. 63. Section 15200.98 of the Welfare and Institutions Code is repealed.

SEC. 64. 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.

CHAPTER 479

An act to amend Section 17710 of the Family Code, to amend and repeal Section 15200.95 of, and to repeal and add Chapter 4 (commencing with Section 10080) of Part 1 of Division 9 of, the Welfare and Institutions Code, and to amend Item 5180-001-0001 of the Budget Act of 1999, relating to child support, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 17710 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17710. (a) Each county shall be responsible for any administrative expenditures for administering the child support program not covered by federal and state funds.

(b) Notwithstanding subdivision (a), effective July 1, 1991, to June 30, 1992, inclusive, counties shall pay the nonfederal share of the administrative costs of conducting the reviews required under Section 15200.8 of the Welfare and Institutions Code from the savings counties will obtain as a result of the reduction in the maximum aid payments specified in Section 11450. Effective July 1, 1992, to June 30, 1993, inclusive, the state shall pay the nonfederal share of administrative costs of conducting the reviews required under Section 15200.8 of the Welfare and Institutions Code. Funding for county costs after June 30, 1993, shall be subject to the availability of funds in the annual Budget Act.

(c) If the federal government imposes a penalty on California's child support program for the failure to meet the October 1, 1997, deadline for the implementation of an automated child support enforcement system required by the federal Family Support Act of 1988 (P.L. 100-485), no portion of any penalty imposed by the federal government for the period of October 1, 1997, to the date of enactment of the act adding this subdivision shall be assessed against Los Angeles County.

SEC. 1.5. Chapter 4 (commencing with Section 10080) of Part 1 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 2. Chapter 4 (commencing with Section 10080) is added to Part 1 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 4. CALIFORNIA CHILD SUPPORT AUTOMATION SYSTEM

10080. (a) The Legislature finds and declares the following:

(1) The failure of the Statewide Automated Child Support System (SACSS) has left California without a statewide automated child support system as required by federal law and subjects the state to significant federal penalties.

(2) Statewide uniformity of child support enforcement practices and procedures is essential to an effective child support enforcement program.

(3) A single statewide automated child support system promotes uniformity and supports a child support collection system that keeps children out of poverty and reduces welfare costs. Successful implementation of a single statewide child support system is critical to the welfare of California and its children.

(4) The federal government has informed the state that the proposed consortia-based alternative system configuration submitted by the state for approval does not meet the criteria required by federal law.

(5) The federal government has informed the state that it intends to disapprove the state's child support (Title IV-D) plan because the

state has failed to timely implement a State Disbursement Unit as required by federal law. Disapproval of the state IV-D plan may result in the state's ineligibility for a federal Temporary Assistance to Needy Families (TANF) block grant under Title IV-A of the Social Security Act jeopardizing the receipt of billions of dollars of federal funds.

(b) It is, therefore, the intent of the Legislature to:

(1) Establish a single statewide automated child support system that complies with all federal certification requirements, federal and state laws and policies, meets Year 2000 requirements, and ensures child support collections will continue to increase.

(2) Ensure that all counties will have an automation system that will allow them to continue their child support services while a single statewide automated child support system is developed and implemented.

(3) Designate the Franchise Tax Board, as an agent for the department, as the entity responsible for the procurement, development, implementation, and maintenance of the single statewide automated system in accordance with the state's child support (Title IV-D) plan.

(4) Ensure that the single statewide automated system project will be completed successfully and in the most expeditious manner possible through the cooperation of all affected state agencies.

(5) Ensure county participation and compliance with the single statewide automated system by providing for the sharing of federal penalties.

(6) Avoid the repetition of the practices that led to the failure of the SACSS system and to require the department to ensure that procedures are in place to prevent the repetition of those practices.

10081. The definitions contained in this section shall govern the construction of this chapter, unless the context requires otherwise:

(a) "Annual automation cooperation agreement" or "AACA" means an agreement between a county and the department, developed in consultation with the Franchise Tax Board, that specifies the responsibilities, activities, milestones, and consequences in regard to automation and that provides the authority for the department to pass through automation funding to the counties.

(b) "California Child Support Automation System" means a single automated child support system operative in all California counties and includes the State Case Registry, the State Disbursement Unit, and all other necessary data bases and interfaces.

(c) "Consortia" means one or more counties that have entered into an agreement to jointly use and maintain a common automated child support system.

(d) "Department" means the state agency designated as the single state agency responsible for operating the child support enforcement program.

(e) "Director" means the director of the state agency designated as the single state agency responsible for operating the child support enforcement program.

(f) "Local child support agency" means the county department established pursuant to Section 17304 of the Family Code.

(g) "Work plan" means a comprehensive document developed by a county that is used to manage its activities toward statewide automation. The work plan shall include, but not be limited to, all tasks, timelines, resources, and critical milestones necessary to complete the county's project responsibilities and any other provision specified by the department.

10082. (a) The department, through the Franchise Tax Board as its agent, shall be responsible for procuring, in accordance with Section 10083, developing, implementing, and maintaining the operation of the California Child Support Automation System in all California counties. This project shall, to the extent feasible, use the same sound project management practices that the Franchise Tax Board has developed in successful tax automation efforts. The single statewide system shall be operative in all California counties and shall also include the State Case Registry, the State Disbursement Unit and all other necessary data bases and interfaces. The system shall provide for the sharing of all data and case files, standardized functions across all of the counties, timely and accurate payment processing and centralized payment disbursement from a single location in the state. The system may be built in phases with payments contingent on acceptance of agreed upon deliverables. As appropriate, additional payments may be made to the vendors for predefined levels of higher performance once the system is in operation.

(b) All ongoing interim automation activities apart from the procurement, development, implementation, and maintenance of the California Child Support Automation System, including Year 2000 remediation efforts and system conversions, shall remain with the department, in consultation with the Health and Welfare Data Center, and shall not be the responsibility of the Franchise Tax Board. However, the department shall ensure that all interim automation activities are consistent with the procurement, development, implementation, and maintenance of the California Child Support Automation System by the Franchise Tax Board through the project charter described in Section 10083 and through continuous consultation.

(c) The department shall seek, at the earliest possible date, all federal approvals and waivers necessary to secure financial participation and system design approval of the California Child Support Automation System.

(d) The department shall seek federal funding for the maintenance and operation of all county child support automation

systems until the time that the counties transition to the California Child Support Automation System.

(e) The department shall direct local child support agencies, if it determines it is necessary, to modify their current automation systems or change to a different system, in order to meet the goal of statewide automation.

(f) Notwithstanding any state policies, procedures, or guidelines, including those set forth in state manuals, all state agencies shall cooperate with the Franchise Tax Board to expedite the procurement, development, implementation, and operation of the California Child Support Automation System and shall delegate to the Franchise Tax Board, to the full extent possible, all functions including acquisition authority as provided in Section 12102 of the Public Contract Code, that may assist the Franchise Tax Board. All state agencies shall give review processes affecting the single statewide automation system their highest priority and expedite these review processes.

(g) The Franchise Tax Board shall employ the expertise needed for the successful and efficient implementation of the single statewide child support automation system and, therefore, shall be provided three Career Executive Assignment Level 2 positions, and may enter into personal services agreements with one or more persons, at the prevailing market rates for the kind or quality of services furnished, provided the agreements do not cause the net displacement of civil service employees.

(h) All funds appropriated to the Franchise Tax Board for purposes of this chapter shall be used in a manner consistent with the authorized budget without any other limitations.

(i) The department and the Franchise Tax Board shall consult with local child support agencies and child support advocates on the implementation of the single statewide child support automation system.

(j) (1) Notwithstanding the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), through December 31, 2000, the department may implement the applicable provisions of this chapter through family support division letters or similar instructions from the director.

(2) The department may adopt regulations to implement this chapter in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulation filed with the Office of Administrative Law on or before January 1, 2003, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. These emergency regulations shall remain in effect for no more than 180 days.

10083. (a) The Franchise Tax Board, as agent for the department, shall develop a procurement plan that employs, where appropriate, techniques proven to be successful in the Franchise Tax Board's previous technology efforts and incorporates where possible best practices from other government jurisdictions. The procurement plan shall consider the events and circumstances that contributed to the failure of the SACSS system and incorporate a strategy for avoiding the repetition of those events and circumstances and shall consider the findings and recommendations made by the Bureau of State Audits in its evaluation of the failure of the SACSS system.

(b) Prior to procurement, the department and the Franchise Tax Board shall develop a project charter that shall be approved by the Executive Officer and Director of the Franchise Tax Board, the director of the department, and the Secretary of the California Health and Human Services Agency. The project charter shall include governance structure, business requirements, project scope, performance measures, contract authority, and all other elements the department and the Franchise Tax Board deem necessary to successfully manage the procurement, development, implementation, and operation of the California Child Support Automation System.

(c) The procurement plan, subject to federal approval, shall include, but not be limited to elements, that accomplish the following tasks:

(1) Provide for full and open competition among qualified vendors. Vendors shall be prequalified based on factors such as successful past performance and implementation of similar systems in other government jurisdictions.

(2) Specify business outcomes to be achieved, not the solution to be provided.

(3) Allow a period of confidential discussion and discovery to develop and refine potential solutions to best meet the business needs.

(4) Maximize the potential for competition and reduce time for implementation by phasing in the project to the greatest extent possible.

(5) Structure the plan to maintain maximum vendor commitment to project success and minimize risk to the state by sharing risk with the private sector.

(6) Utilize "best value" evaluation methods, which means to select the solution based upon achieving the best solution based on business performance measures not necessarily the lowest price.

(7) Consider the future ability of the selected system to provide enhancements that will improve long-term effectiveness of child support management.

(8) Base payments to the vendors primarily on achieving predefined performance measures.

(d) The California Child Support Automation System shall incorporate technology that can be readily enhanced and modernized for the expected system life. In selecting the new system, consideration shall be given to the extent to which the candidate systems employ open architectures and standards.

(e) Notwithstanding any other provision of law, the department, or the Franchise Tax Board, or its designee may contract with existing child support consultants to provide their current and related services and project management through the life of the child support automation project to help meet legislative timeframes, consistent with the requirements of Article 7 of the California Constitution.

(f) Notwithstanding any other provision of law, the procurements for all design, development, implementation, maintenance, and operation of the California Child Support Automation System and any bid protest conducted under this chapter shall be subject to the following procedures:

(1) The Executive Officer of the Franchise Tax Board, or his or her designee, may consider and decide initial protests. A decision regarding initial protests shall be final.

(2) A contract may be entered into pending a final decision on a protest. The protest shall not prevent the commencement of work in accordance with the terms of the contract awarded.

(3) Protests shall be limited to participating bidders.

(4) A protest shall be filed within five days of the posting of the notice of the award. The Department of General Services shall review a protest within seven days of the filing date. If the Department of General Services finds that a protest is clearly insufficient on its face, entirely without merit, or outside the scope of permissible protest, it may make a final disposition of the protest.

(5) The Director of General Services shall issue a ruling within a period not to exceed 45 days from the date the protest is filed.

(6) Grounds to protest under this section shall be limited to violations of the solicitation procedures resulting in the protestant's proposal not being selected. These grounds shall be stated in the solicitation document with the protest procedures.

(7) Any bidder that has filed a protest that is determined by the Department of General Services to be clearly insufficient on its face, entirely without merit, or outside the scope of permissible protest shall not be eligible to participate in solicitations conducted under this section.

(g) To protect public confidence in the integrity of the procurements described in this section, the State Auditor shall monitor the evaluation and selection process and must certify that the evaluation was based on the evaluation criteria contained in the solicitation document, that the vendor or vendors were chosen according to the selection methodology in the solicitation document

and that both of these activities were carried out without bias or favoritism toward any bidder.

10084. (a) The department shall be responsible for requiring each local child support agency to cooperate in establishing the California Child Support Automation System in every county. This requirement shall include taking steps necessary to facilitate the transition from interim systems to the California Child Support Automation System, including those modifications to current systems as the department may require in subdivision (d) of Section 10082.

(b) The department shall require each local child support agency, by December 1, 1999, and each December 1 thereafter, to enter into an annual automation cooperation agreement (AACA) with the department. The department, in consultation with the Franchise Tax Board, shall specify the terms of the agreement.

(c) Each local child support agency shall develop and submit a work plan to the department by the dates specified by the department in the AACA.

(d) If the AACA needs to be amended due to a change in state or federal law, regulations, or policy, each local child support agency must enter into an amended AACA as required by the department.

(e) A local child support agency shall not receive any state General Fund moneys or federal funds for child support automation efforts for any period in which the department has found that the local child support agency has failed to do any of the following:

(1) Enter into an AACA.

(2) Develop, submit, or comply with their work plan.

(3) Enter into an amended AACA when required by the department.

(4) Comply with any other provision of the AACA.

10085. (a) (1) Automation costs for county interim systems shall be funded with General Fund incentive funds available pursuant to paragraph (1) of subdivision (b) of Section 15200.81 prior to the funding of administrative costs pursuant to clause (I) of subparagraph (B) of paragraph (2) of subdivision (b) of Section 15200.81.

(2) Automation costs for county interim systems shall be funded with General Fund incentive funds available pursuant to paragraph (1) of subdivision (b) of Section 17704 of the Family Code prior to the funding of administrative costs pursuant to clause (I) of subparagraph (B) of paragraph (2) of subdivision (b) of Section 17704 of the Family Code.

(3) Paragraph (2) shall only become operative if Assembly Bill 196 of the 1999–2000 Regular Session becomes operative January 1, 2000, in which case paragraph (1) shall be operative only until the operative date of Assembly Bill 196, at which time paragraph (2) shall become operative.

(b) To the extent funds are provided in the annual Budget Act, the state shall be responsible for funding the development and

procurement of the California Child Support Automation System, all costs of transitioning the local child support agencies from their existing child support automation systems to that system, and all of the nonfederal share of local child support agencies' interim automation costs, which may include the following:

(1) Data cleanup and conversion activities, training costs, and costs associated with the development of county interfaces, as defined by the department.

(2) Costs associated with ongoing maintenance and operations, as specified by the department.

(3) Enhancement costs related to state and federal mandates, as specified by the department.

(4) Enhancement costs related to Year 2000 requirements, as specified by the department. For any local child support agency that does not develop a Year 2000 remediation plan approved by the department, according to standards developed by the department, and does not make progress on the approved work plan, no state funds shall be available.

(5) Enhancement costs required to meet the distribution requirements contained in Public Law 104-193 and any subsequent amendments to the distribution requirements, as specified by the department.

(6) Any other costs as deemed necessary by the department to ensure that local child support agencies can continue operating essential interim automation systems.

(c) (1) Automation costs under this chapter shall not be considered county administrative costs described in Section 15200.81.

(2) Automation costs under this chapter shall not be considered county administrative costs described in Section 17704 of the Family Code.

(3) Paragraph (2) shall only become operative if Assembly Bill 196 of the 1999–2000 Regular Session becomes operative January 1, 2000, in which case paragraph (1) shall be operative only until the operative date of Assembly Bill 196, at which time paragraph (2) shall become operative.

(d) Notwithstanding any other provision of law, no local child support agency may enhance or expand a child support automation system unless specifically authorized by the director, in writing, after having made a finding that the enhancement or expansion costs are necessary to maintain existing levels of service, accommodate changes in state or federal law, or will result in increased short-term program performance and is otherwise cost-effective. The director shall respond within 60 days to the request for authorization.

10086. If the state pays on behalf of a county child support automation costs that are otherwise the responsibility of the county, the state may recover these payments through billing the county or offset of amounts from any state payments due to the county after consulting with the county on the recovery methodology.

10087. To the extent that funds are provided in the annual Budget Act, the state shall pay all of the federal share of local child support agency child support automation costs that are unfunded by the federal government. The department shall establish the criteria under which these costs shall be paid to each local child support agency. Criteria shall include, but are not limited to, the following: The local child support agency's compliance with the requirements to enter into an AACA with the department; the local child support agency's development, submission, and compliance with its approved work plans; the local child support agency's action to enter into an amended AACA when required by the department; and the local child support agency's compliance with all of the provisions of the AACA.

10088. (a) If the federal government imposes a penalty on California's child support program for failure to meet the federal automation requirements, the penalty, for purposes of this chapter, shall be considered a reduction of federal financial participation in county and state administrative costs of the child support program, and shall be allocated to each local child support agency in proportion to its administrative costs. In such a case, the department may hold penalties in abeyance and supplant any dollar reduction to county administrative funding, up to 100 percent of the reduction, subject to the availability of funds in the annual Budget Act. The department and the Department of Finance shall establish criteria under which the penalties may be held in abeyance to each local child support agency. Criteria for which these penalties may be held in abeyance include, but are not limited to, the following: The local child support agency has entered into an AACA with the department; the local child support agency is meeting all due dates in its work plan, including steps to resolve any Year 2000 problems; the local child support agency has resolved any federal distribution requirement problems; and the county is otherwise cooperating in its current automation and AACA requirements and establishing the California Child Support Automation System.

(b) Any local child support agency that receives a reduction in federal funding as a result of the imposition of a federal penalty shall continue to comply with state and federal law and all requirements of the state plan and plans of cooperation, including the AACA.

10090. The department and the Franchise Tax Board shall provide, at least twice annually, written or oral reports on the development and implementation of the California Child Support Automation System to interested persons and organizations, which shall include the California State Association of Counties, the California Family Support Council, members of the Legislature, and child support advocacy groups.

10091. (a) The department, in consultation with the Franchise Tax Board, shall be responsible for establishing timelines for the development and implementation of the California Child Support

Automation System. The initial timeline shall address all procurement activities through award of the contracts. A second timeline shall be established covering development and implementation activities once the contract award has been made to the selected vendors. All timelines shall incorporate discrete development milestones that are enforceable and provide reliable progress indications.

(b) The department and the Franchise Tax Board shall report progress against the established timelines during the annual budget hearing process.

10092. (a) The department, in consultation with the Franchise Tax Board, shall provide uniform statewide training at appropriate intervals to best train state and local child support agency employees on the use and application of the California Child Support Automation System.

(b) The department, in consultation with the Franchise Tax Board, shall develop a training and reference manual to be disseminated to all local child support agencies for employee use.

10093. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. Section 15200.95 of the Welfare and Institutions Code is amended to read:

15200.95. (a) Each county shall be responsible for its nonfederal share of administrative expenditures for administering the child support program.

(b) Notwithstanding subdivision (a), effective July 1, 1991, to June 30, 1992, inclusive, counties shall pay the nonfederal share of the administrative costs of conducting the reviews required under Section 15200.8 from the savings counties will obtain as a result of the reduction in the maximum aid payments specified in Section 11450. Effective July 1, 1992, to June 30, 1993, inclusive, the state shall pay the nonfederal share of administrative costs of conducting the reviews required under Section 15200.8. Funding for county costs after June 30, 1993, shall be subject to the availability of funds in the annual Budget Act.

(c) If the federal government imposes a penalty on California's child support program for the failure to meet the October 1, 1997, deadline for the implementation of an automated child support enforcement system required by the federal Family Support Act of 1988 (P.L. 100-485), no portion of any penalty imposed by the federal government for the period of October 1, 1997, to the date of enactment of the act adding this subdivision shall be assessed against Los Angeles County. Pursuant to this subdivision, any portion of the penalties not allocated to Los Angeles County shall be paid from the General Fund, upon appropriation by the Legislature, and shall not be allocated to any other county.

(d) This section shall remain operative only until the operative date of Assembly Bill 196 of the 1999–2000 Regular Session, at which time this section is repealed.

SEC. 4. The sum of ninety-five million five hundred thousand dollars ($95,500,000) is hereby appropriated from the General Fund to the State Department of Social Services, in augmentation of Item 5180-141-0001 of the Budget Act of 1999, for the state payment of penalties, otherwise allocated to each county, being held in abeyance pursuant to subdivision (a) of Section 10088 of the Welfare and Institutions Code.

SEC. 5. For purposes of implementing and administering this act in the 1999–2000 fiscal year, the sum of six million six hundred thousand dollars ($6,600,000) is hereby appropriated from the General Fund to the Franchise Tax Board, in augmentation of Item 1730-001-0001 of the Budget Act of 1999. Of the amount appropriated, 34 percent shall be paid from the General Fund and 66 percent shall be paid through federal reimbursement. It is the intent of the Legislature that the funds to administer this act for the 2000–01 fiscal year, and each fiscal year thereafter, shall be provided for in the annual Budget Act. In the event an appropriation is not fully expended by the Franchise Tax Board during the fiscal year for which it was appropriated, the unexpended appropriated amount shall be carried over to, and expended in, the following fiscal year if expended for the purpose for which it was originally appropriated. The appropriated funds shall not be reduced or redirected away from the purpose for which they were appropriated without the prior approval of the Director of Finance. The director shall not approve any such reduction or redirection sooner than 30 days after providing notification to the Joint Legislative Budget Committee.

SEC. 6. (a) Any funds referenced in subdivision (a) of Section 17714 of the Family Code and subdivision (a) of Section 15200.97 of the Welfare and Institutions Code that have been or are to be paid to a county for any fiscal year through the 1998–99 fiscal year, including interest earned on those funds, that have not been expended or encumbered, as defined by standards developed by the State Department of Social Services, by September 1, 1999, or are not part of a written plan approved by the department under subdivision (c) of Section 17714 of the Family Code or subdivision (c) of Section 15200.97 of the Welfare and Institutions Code, shall revert to the General Fund. In addition, and notwithstanding subdivision (b) of Section 15200.81 of the Welfare and Institutions Code or Section 17704 of the Family Code, as of June 30, 2000, the child support incentive funds appropriated in Item 5180-101-0001 of the Budget Act of 1999 that have not been allocated for program administrative costs pursuant to Section 15200.81 of the Welfare and Institutions Code or Section 17704 of the Family Code, and that otherwise would have been used to fund incentive payments, shall revert to the General Fund.

(b) The auditor and controller of each county shall calculate the amount of unexpended and unencumbered funds based on standards determined by the department. The auditor and controller shall certify that amount in a report submitted to the department by December 1, 1999.

(c) The department shall notify each county of the amount to be reverted to the General Fund. Within 30 days of notification, the county shall remit that amount to the department.

(d) The department shall contract with the Department of Finance for the audit of county child support funds, including, but not limited to, prior year funds subject to reversion to the General Fund and current funding uses.

SEC. 7. (a) Any funds referenced in subdivision (a) of Section 15200.97 of the Welfare and Institutions Code that have been or are to be paid to a county for any fiscal year through the 1998–99 fiscal year, including interest earned on those funds, that have not been expended or encumbered, as defined by standards developed by the State Department of Social Services, by September 1, 1999, or are not part of a written plan approved by the department under subdivision (c) of Section 15200.97 of the Welfare and Institutions Code, shall revert to the General Fund. In addition, and notwithstanding subdivision (b) of Section 15200.81 of the Welfare and Institutions Code, as of June 30, 2000, the child support incentive funds appropriated in Item 5180-101-0001 of the Budget Act of 1999 that have not been allocated for program administrative costs pursuant to Section 15200.81 of the Welfare and Institutions Code, and that otherwise would have been used to fund incentive payments, shall revert to the General Fund.

(b) The auditor and controller of each county shall calculate the amount of unexpended and unencumbered funds based on guidelines determined by the department. The auditor and controller shall certify that amount in a report submitted to the department by December 1, 1999.

(c) The department shall notify each county of the amount to be reverted to the General Fund. Within 30 days of notification, the county shall remit that amount to the department.

(d) The department shall contract with the Department of Finance for the audit of county child support funds, including, but not limited to, prior year funds subject to reversion to the General Fund and current funding uses.

SEC. 8. Section 6 of this act shall become operative only if Assembly Bill 196 of the 1999–2000 Regular Session is chaptered and adds Sections 17704 and 17714 to the Family Code, in which case Section 7 of this act shall not become operative.

SEC. 9. Upon the request of the Department of Child Support Services or the Health and Human Services Agency, the Department of Social Services, with the approval of the Department of Finance, shall transfer Budget Act of 1999 state operations and local assistance

appropriation authority and positions to the Department of Child Support Services. These transfers shall not exceed the budgeted amounts for child support in the following Budget Act Items: 5180-001-0001, 5180-002-0001, 5180-002-0890, 5180-101-0001, 5180-101-0890, 5180-141-0001, and 5180-141-0890. The Department of Finance shall implement the approved transfers by Executive Order, and the transferred amounts shall be deemed part of the Budget Act of 1999 and subject to the provisions thereof.

SEC. 10. Upon the request of the Franchise Tax Board and the Department of Social Services, the Department of Finance shall transfer Budget Act of 1999 state operations and local assistance appropriation authority and positions related to development and procurement of a single statewide automated child support system from Items 5180-001-0001, 5180-001-0890, 5180-141-0001, and 5180-141-0890 to the Franchise Tax Board in augmentation of Item 1730-001-0001 for the purpose of implementing this act. The Department of Finance shall make conforming transfers and adjustments to the Budget Act of 1999 appropriations and position authority for the Health and Welfare Agency Data Center. The Department of Finance shall implement these approved transfers and adjustments by Executive Order. The Franchise Tax Board shall separately account for funds transferred and appropriated for the purposes of this act. The Franchise Tax Board shall delegate all necessary authority to the executive officer to ensure the expeditious and effective completion of this project.

SEC. 11. Item 5180-001-0001 of the Budget Act of 1999 is amended to read:

5180−001−0001−−For support of Department of Social Services		79,775,000
Schedule:		
(a) 16−Welfare Programs	79,066,000	
(b) 25−Social Services and Licensing	124,862,000	
(c) 35−Disability Evaluation and Other Services	186,523,000	
(d) 60.01−Administration	34,255,000	
(e) 60.02−Distributed Administration	−34,054,000	
(f) Reimbursements	−16,360,000	

(g) Amount payable from Foster Family Home and Small Family Home Insurance Fund (Item 5180−001−0131) ..... −3,000,000

(h) Amount payable from the Federal Trust Fund (Item 5180−001−0890) ..... −291,517,000

Provisions:

1. The Department of Finance may authorize the transfer of funds from Schedule (b) of this item to Schedule (c), Program 25.45, of Item 5180−151−0001, Community Care Licensing, in order to allow counties to perform the facilities evaluation function.
2. The Department of Finance may authorize the transfer of funds from Schedule (b) of this item to Schedule (a)(2), Program 25.25.020, of Item 5180−151−0001, Adoptions, in order to allow counties to perform the adoptions program function.
3. Nonfederal funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance−of−effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104−193) may not be expended in any way that would cause their disqualification as a federally allowable maintenance−of−effort expenditure.
4. Of the amount appropriated in this item, $1,000,000 shall be allocated on a one−time basis to local food bank programs to expand refrigeration space, purchase vehicles, or purchase other equipment that would be directly used for the purchase, delivery, or distribution of food products or for other uses that would allow food banks to increase the amount of food they can receive and distribute, with the allocation process for this $1,000,000 to be developed by the department in consultation with the Emergency Food Assistance Advisory Board.
6. The State Department of Social Service shall collect and analyze data on foster family agency (FFA) and non−relative foster family

home (FFH) placements, including but not limited to, statewide and county−specific utilization patterns and historic trends; rates of payment, including specialized care increments; and comparative data on the characteristics of (a) counties and their placement policies, (b) the children placed in each kind of placement, including demo graphic information as well as information such as the number of prior placements, length of stay, and treatment goals and (c) the FFA and non−relative FFH placements in terms of purpose, number of certified beds, number of children in residence.

The department shall report its findings to the appropriate fiscal and policy committees of the Legislature by June 30, 2000. This report shall include recommendations for a second phase of study, to begin June 30, 2000, to determine how FFA and non−relative FFH placements are and should be utilized to meet the needs of children and families. The second phase shall include, at a minimum, the identification and comparison of (a) county and FFA standards of practice for certification or licensure and oversight of homes and the services and supports provided to parents, (b) the criteria counties use to determine whether to place children into an FFA or non−relative FFH, (c) how often and why counties place children into FFA homes when the child is assessed as needing an FFH placement, (d) the reasons that foster parents choose to enroll and remain with the county or an FFA, and (e) the outcomes for children placed out of home in these facilities, both during the placement and after they have left placement. The department shall convene a steering committee to provide direction for this study.

7. The State Department of Social Services shall report during budget hearings for the 2000−01 fiscal year on its implementation of regional foster care ombudsman offices, including, but not limited to, the process by which it established north and south regional offices and data collection procedures. The department shall also provide preliminary

information on the potential need for additional regional offices or staff, including at a minimum the number of calls received by the offices, the time of day when calls are received, and the resolution of these calls.

8. Upon the approval of the Department of Finance, the Department of Social Services may transfer funds to this item from Items 5180–002–0001, 5180–101–0001, and 5180–141–0001, inclusive of amounts payable from the federal trust fund, for the purpose of advanced implementation activities performed on behalf of the Department of Child Support Services. The Health and Human Services Agency shall concur in any transfers made under this provision.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 13. Section 1 of this act, amending Section 17710 of the Family Code as added by Assembly Bill 196 of the 1999–2000 Regular Session, shall become operative only if Assembly Bill 196 of the 1999–2000 Regular Session is chaptered and adds Section 17710 to the Family Code, in which case Section 3 of this act, amending Section 15200.95 of the Welfare and Institutions Code, shall remain operative only until the operative date of Section 17710 of the Family Code, at which time Section 1 of this act 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 that a federally required statewide child support automation system be developed and implemented as soon as possible and to avoid the imposition of more federal penalties than necessary, it is necessary that this act take effect immediately.

CHAPTER 480

An act to amend Sections 5208, 5212, 5234, 5246, 17000, 17211, 17300, 17302, 17304, 17305, 17306, 17310, 17312, 17400, 17404, 17406, 17415, 17430, 17500, 17600, 17602, 17604, 17704, 17706, and 17710 of, and to add Section 17501 and 17700 to, the Family Code, to amend Sections 19271 and 19272 of, and to add Section 19275 to, the Revenue and Taxation Code, to amend Section 1088.8 of the Unemployment Insurance Code, to amend and renumber Section 18205 of, and to repeal Section 15200.81 of, the Welfare and Institutions Code, relating to social services.

[Approved by Governor September 24, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 5208 of the Family Code is amended to read:

5208. (a) "Earnings assignment order for support" means an order that assigns to an obligee a portion of the earnings of a support obligor due or to become due in the future.

(b) Commencing January 1, 2000, all earnings assignment orders for support in any action in which child support or family support is ordered shall be issued on an "order/notice to withhold income for child support" mandated by Section 666 of Title 42 of the United States Code.

SEC. 2. Section 5212 of the Family Code is amended to read:

5212. "IV-D Case" means any case being established, modified, or enforced by the local child support agency pursuant to Section 654 of Title 42 of the United States Code (Section 454 of the Social Security Act).

SEC. 3. Section 5234 of the Family Code is amended to read:

5234. Within 10 days of service of an assignment order or an order/notice to withhold income for child support on an employer, the employer shall deliver both of the following to the obligor:

(a) A copy of the assignment order or the order/notice to withhold income for child support.

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

SEC. 4. Section 5246 of the Family Code is amended to read:

5246. (a) This section applies only to Title IV-D cases where support enforcement services are being provided by the local child support agency pursuant to Section 17400.

(b) In lieu of an earnings assignment order signed by a judicial officer, the local child support agency may serve on the employer a notice of assignment in the manner specified in Section 5232. An order/notice to withhold income for child support shall have the same force and effect as an earnings assignment order signed by a judicial officer. An order/notice to withhold income from child support, when used under this section, shall be considered a notice and shall not require the signature of a judicial officer.

(c) Pursuant to Section 666 of Title 42 of the United State Code, the federally mandated order/notice to withhold income for child support shall be used for the purposes described in this section.

(d) If the underlying court order for support does not provide for an arrearage payment, or if an additional arrearage accrues after the date of the court order for support, the local child support agency may send an order/notice to withhold income for child support that shall be used for the purposes described in this section directly to the employer which specifies the updated arrearage amount and directs the employer to withhold an additional amount to be applied towards liquidation of the arrearages not to exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code. The Franchise Tax Board, in support of its responsibility for accounts receivable management of delinquent child support obligations pursuant to Section 17501, may send an order/notice to withhold income for child support directly to the employer that specifies the updated arrearage amount and directs the employer to withhold an additional amount to be applied to the liquidation of the arrearages. Any order/notice to withhold income for child support issued by the Franchise Tax Board shall be issued in the name of the local child support agency.

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

(1) If at the hearing the obligor establishes that he or she is not the obligor or good cause or an alternative arrangement as provided in Section 5260, the court may order that service of the order/notice to withhold income for child support be quashed. If the court quashes service of the order/notice to withhold income for child support, the local child support agency shall notify the employer within 10 days.

(2) If the obligor contends at the hearing that the payment of arrearages at the rate specified in the order/notice to withhold income for child support is excessive or that the total arrearages owing is incorrect, and if it is determined that payment of the arrearages at the rate specified in this section creates an undue hardship upon the obligor or that the withholding would exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code Annotated, the rate at which the arrearages must

be paid shall be reduced to a rate that is fair and reasonable considering the circumstances of the parties and the best interest of the child. If it is determined at a hearing that the total amount of arrearages calculated is erroneous, the court shall modify the amount calculated to the correct amount. If the court modifies the total amount of arrearages owed or reduces the monthly payment due on the arrearages, the local child support agency shall serve the employer with an amended order/notice to withhold income for child support within 10 days.

(f) If an obligor's current support obligation has terminated by operation of law, the local child support agency may serve an order/notice to withhold income for child support on the employer which directs the employer to continue withholding from the obligor's earnings an amount to be applied towards liquidation of the arrearages, not to exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code, until such time that the employer is notified by the local child support agency that the arrearages have been paid in full. The employer shall provide the obligor with a copy of the order/notice to withhold income for child support and a blank form that the obligor may file with the court to request a hearing to modify or quash the assignment with instructions on how to file the form and obtain a hearing date. The obligor shall be entitled to the same rights to a hearing as specified in subdivision (e).

(g) The local child support agency shall retain a copy of the order/notice to withhold income for child support and shall file a copy with the court whenever a hearing concerning the order/notice to withhold income for child support is requested.

(h) The local child support agency may transmit an order/notice to withhold income for child support and other forms required by this section to the employer through electronic means.

SEC. 5. Section 17000 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17000. The definitions contained in this section, and definitions applicable to Division 9 (commencing with Section 3500), shall govern the construction of this division, unless the context requires otherwise.

(a) "Child support debt" means the amount of money owed as child support pursuant to a court order.

(b) "Child support order" means any court order for the payment of a set or determinable amount of support by a parent or a court order requiring a parent to provide for health insurance coverage. "Child support order" includes any court order for spousal support or for medical support to the extent these obligations are to be enforced by a single state agency for child support under Title IV-D.

(c) "Court" means any superior court of this state and any court or tribunal of another state that has jurisdiction to determine the liability of persons for the support of another person.

(d) "Court order" means any judgment, decree, or order of any court of this state that orders the payment of a set or determinable amount of support by a parent. It does not include any order or decree of any proceeding in which a court did not order support.

(e) "Department" means the Department of Child Support Services.

(f) "Dependent child" means any of the following:

(1) Any person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) Any unmarried person who is at least 18 years of age but who has not reached his or her 19th birthday, is not emancipated, and is a student regularly attending high school or a program of vocational or technical training designed to train that person for gainful employment.

(g) "Director" means the Director of Child Support Services or his or her authorized representative.

(h) "Local child support agency" means the county department of child support services created pursuant to this chapter and with which the department has entered into a cooperative agreement, to secure child and spousal support, medical support, and determine paternity.

(i) "Parent" means the natural or adoptive father or mother of a dependent child, and includes any person who has an enforceable obligation to support a dependent child.

(j) "Public assistance" means any amount paid under the California Work Opportunity and Responsibility to Kids Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), or any Medi-Cal benefit, for the benefit of any dependent child or the caretaker of a child.

(k) "Public assistance debt" means any amount paid under the California Work Opportunity and Responsibility to Kids Act, contained in Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, for the benefit of any dependent child or the caretaker of a child for whom the department is authorized to seek recoupment under this division, subject to applicable federal law.

(*l*) "Title IV-D" or "IV-D" means Part D of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.).

SEC. 6. Section 17211 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17211. The department shall administer the Child Support Assurance Demonstration Project established by Article 5 (commencing with Section 18241) of Chapter 3.3 of Part 6 of the Welfare and Institutions Code, and the county demonstration projects to provide employment and training services to nonsupporting noncustodial parents authorized by Section 18205.5 of the Welfare and Institutions Code. However, the department may

contract with the State Department of Social Services to continue development and implementation of these demonstration projects until they have been fully implemented. After the demonstration projects have been fully implemented, the department shall consult with the State Department of Social Services on the administration of the projects. The contracts for evaluation of the demonstration projects shall continue to be maintained by the State Department of Social Services. The department shall be responsible for the final evaluation of the projects.

SEC. 6.5. Section 17300 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session of the Legislature, is amended to read:

17300. With the consent of the Senate, the Governor shall appoint, to serve at his or her pleasure, an executive officer who shall be director of the department. In making the appointment the Governor shall consider training, demonstrated ability, experience, and leadership in organized child support enforcement administration. The director shall receive the salary provided for by Chapter 6 (commencing with Section 11550), Part 1, Division 3, Title 2 of the Government Code.

The Governor also may appoint, to serve at his or her pleasure, not to exceed two chief deputy directors of the department, and one deputy director of the department. The salaries of the chief deputy directors and the deputy director shall be fixed in accordance with law.

SEC. 7. Section 17302 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17302. The director shall do all of the following:

(a) Be responsible for the management of the department.

(b) Administer all federal and state laws and regulations pertaining to the administration of child support enforcement obligations.

(c) Perform all duties as may be prescribed by law, and any other administrative and executive duties imposed by law.

(d) Observe, and report to the Governor, the Legislature, and the public on, the conditions of child support enforcement activities throughout the state pursuant to subdivision (e) of Section 17602.

SEC. 8. Section 17304 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17304. To address the concerns stated by the Legislature in Section 17303, each county shall establish a new county department of child support services. Each department is also referred to in this division as the local child support agency. The local child support agency shall be separate and independent from any other county department and shall be responsible for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining

paternity in the case of a child born out of wedlock. The local child support agency shall refer all cases requiring criminal enforcement services to the district attorney and the district attorney shall prosecute those cases, as appropriate. If a district attorney fails to comply with this section, the director shall notify the Attorney General and the Attorney General shall take appropriate action to secure compliance. The director shall be responsible for implementing and administering all aspects of the state plan that direct the functions to be performed by the local child support agencies relating to their Title IV-D operations. In developing the new system, all of the following shall apply:

(a) The director shall negotiate and enter into cooperative agreements with county and state agencies to carry out the requirements of the state plan and provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations as required pursuant to Section 654 of Title 42 of the United States Code. The cooperative agreements shall require that the local child support agencies are reasonably accessible to the citizens of each county and are visible and accountable to the public for their activities. The director, in consultation with the impacted counties, may consolidate the local child support agencies, or any function of the agencies, in more than one county into a single local child support agency, if the director determines that the consolidation will increase the efficiency of the state Title IV-D program and each county has at least one local child support office accessible to the public.

(b) The director shall have direct oversight and supervision of the Title IV-D operations of the local child support agency, and no other local or state agency shall have any authority over the local child support agency as to any function relating to its Title IV-D operations. The local child support agency shall be responsible for the performance of child support enforcement activities required by law and regulation in a manner prescribed by the department. The administrator of the local child support agency shall be responsible for reporting to and responding to the director on all aspects of the child support program.

(c) Nothing in this section prohibits the local child support agency, with the prior approval of the director, from entering into cooperative arrangements with other county departments, as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation submitted to the department and approved by the director. The local child support agency may not enter into a cooperative agreement or contract with any county department or independently elected official, including the office of the district attorney, to run, supervise, manage, or oversee the Title IV-D functions of the local child support agency. Until September 1, 2004, the local child support agency may enter into a cooperative agreement or contract of restricted scope and duration with a district

attorney to utilize individual attorneys as necessary to carry out limited attorney services. Any cooperative agreement or contract for the attorney services shall be subject to approval by the department and contingent upon a written finding by the department that either the relatively small size of the local child support agency program, or other serious programmatic needs, arising as a result of the transition make it most efficient and cost-effective to contract for limited attorney services. The department shall ensure that any cooperative agreement or contract for attorney services provides that all attorneys be supervised by, and report directly to, the local child support agency, and comply with all state and federal child support laws and regulations. The office of the Legislative Analyst shall review and assess the efficiency and effectiveness of any such cooperative agreement or contract, and shall report its findings to the Legislature by January 1, 2004. Within 60 days of receipt of a plan of cooperation or contract from the local child support agency, the department shall either approve the plan of cooperation or contract or notify the agency that the plan is denied. If an agency is notified that the plan is denied, the agency shall have the opportunity to resubmit a revised plan of cooperation or contract. If the director fails to respond in writing within 60 days of receipt, the plan shall otherwise be deemed approved. Nothing in this section shall be deemed an approval of program costs relative to the cooperative arrangements entered into by the counties with other county departments.

(d) In order to minimize the disruption of services provided and to capitalize on the expertise of employees, the director shall create a program that builds on existing staff and facilities to the fullest extent possible. All assets of the family support division in the district attorney's office shall become assets of the local child support agency.

(e) (1) All employees and other personnel who serve the office of the district attorney and perform child support collection and enforcement activities shall become the employees and other personnel of the county child support agency 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, and health and pension plans.

(2) Permanent employees of the office of the district attorney on the effective date of this chapter shall be deemed qualified, and no other qualifications shall be required for employment or retention in the county child support agency. Probationary employees on the effective date of this chapter shall retain their probationary status and rights, and shall not be deemed to have transferred, so as to require serving a new probationary period.

(3) Employment seniority of an employee of the office of the district attorney on the effective date of this chapter shall be counted toward seniority in the county child support agency and all time

spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(4) An employee organization that has been recognized as the representative or exclusive representative of an established appropriate bargaining unit of employees who perform child support collection and enforcement activities shall continue to be recognized as the representative or exclusive representative of the same employees of the county.

(5) An existing memorandum of understanding or agreement between the county or the office of the district attorney and the employee organization shall remain in effect and be fully binding on the parties involved for the term of the agreement.

(6) Nothing in this section shall be construed to limit the rights of employees or employee organizations to bargain in good faith on matters of wages, hours, or other terms and conditions of employment, including the negotiation of workplace standards within the scope of bargaining as authorized by state and federal law.

(7) (A) Except as provided in subparagraph (B), a public agency shall, in implementing programs affected by the act of addition or amendment of this chapter to this code, perform program functions exclusively through the use of civil service employees of the public agency.

(B) Prior to transition from the district attorney to the local child support agency under Section 17305, the district attorney may continue existing contracts and their renewals, as appropriate. After the transition under Section 17305, any contracting out of program functions shall be approved by the director. The director shall approve or disapprove a proposal to contract out within 60 days. Failure of the director to respond to a request to contract out within 60 days after receipt of the request shall be deemed approval, unless the director submits an extension to respond, which in no event shall be longer than 30 days.

(f) The administrator of the local child support agency shall be an employee of the county selected by the board of supervisors pursuant to the qualifications established by the department. The administrator may hire staff, including attorneys, to fulfill the functions required by the agency and in conformity with any staffing requirements adopted by the department, including all those set forth in Section 17306. All staff shall be employees of the county and shall comply with all local, state, and federal child support laws, regulations, and directives.

SEC. 9. Section 17305 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17305. (a) In order to achieve an orderly and timely transition to the new system with minimal disruption of services, the director shall begin the transition from the office of the district attorney to the local child support agencies pursuant to Section 17304, commencing January 1, 2001. The director shall transfer the appropriate number

of counties, equaling at least 50 percent of the statewide caseload into the new system by January 1, 2002. The transition shall be completed by January 1, 2003. A county that has appointed an administrator for the local child support agency and has complied with the requirements of subdivision (b) may transition prior to January 1, 2001, subject to the approval of the director. In determining the order in which counties will be transferred from the office of the district attorney to the local child support agencies, the director shall do all of the following:

(1) Consider the performance of the counties in establishing and collecting child support.

(2) Minimize the disruption of the services provided by the counties.

(3) Optimize the chances of a successful transition.

(b) In order to achieve an orderly transition with minimal disruption of services, a county shall submit a plan of transition which shall be approved by the department prior to transition.

(c) The director shall consult with the district attorney to achieve an orderly transition and to minimize the disruption of services. Each district attorney shall cooperate in the transition as requested by the director.

(d) To minimize any disruption of services provided under the child support enforcement program during the transition, each district attorney shall:

(1) Continue to be designated the single organizational unit whose duty it shall be to administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity for that county until such time as the county is notified by the director that the county has been transferred pursuant to subdivision (a) or sooner under Section 17602.

(2) At a minimum, maintain all levels of funding, staffing, and services as of January 1, 1999, to administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity. If the director determines that a district attorney has lowered the funding, staffing, or services of the child support enforcement program, the director may withhold part or all state and federal funds, including incentive funds, from the district attorney. Before the director withholds part of or all state and federal funds, including incentive funds, the district attorney shall have the opportunity to demonstrate good cause for any reductions in funding, staffing, or services. Good cause exceptions for reductions shall include, but not be limited to, natural staff attrition and caseload changes.

SEC. 10. Section 17306 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17306. (a) The Legislature finds and declares all of the following:

(1) While the State Department of Social Services has had statutory authority over the child support system, the locally elected

district attorneys have operated their county programs with a great deal of autonomy.

(2) District attorneys have operated the child support programs with different forms, procedures and priorities, making it difficult to adequately evaluate and modify performance statewide.

(3) Problems collecting child support reflect a fundamental lack of leadership and accountability in the collection program. These management problems have cost California taxpayers and families billions of dollars.

(b) The director shall develop uniform forms, policies and procedures to be employed statewide by all local child support agencies. Pursuant to this subdivision, the director shall:

(1) Adopt uniform procedures and forms.

(2) Establish standard caseworker to case staffing ratios, adjusted as appropriate to meet the varying needs of local programs.

(3) Establish standard attorney to caseworker ratios, adjusted as appropriate to meet the varying needs of local programs.

(4) Institute a consistent statewide policy on the appropriateness of closing cases to ensure that, without relying solely on federal minimum requirements, all cases are fully and pragmatically pursued for collections prior to closing.

(5) Evaluate the best practices for the establishment, enforcement, and collection of child support, for the purpose of determining which practices should be implemented statewide in an effort to improve performance by local child support agencies. In evaluating the best practices, the director shall review existing practices in better performing counties within California, as well as practices implemented by other state Title IV-D programs nationwide.

(6) Evaluate the best practices for the management of effective child support enforcement operations for the purpose of determining what management structure should be implemented statewide in an effort to improve the establishment, enforcement, and collection of child support by local child support agencies, including an examination of the need for attorneys in management level positions. In evaluating the best practices, the director shall review existing practices in better performing counties within California, as well as practices implemented by other state Title IV-D programs nationwide.

(7) Set priorities for the use of specific enforcement mechanisms for use by both the local child support agency and the Franchise Tax Board. As part of establishing these priorities, the director shall set forth caseload processing priorities to target enforcement efforts and services in a way that will maximize collections and avoid welfare dependency.

(8) Develop uniform training protocols, require periodic training of all child support staff, and conduct training sessions as appropriate.

(9) Review and approve annual budgets submitted by the local child support agencies to ensure each local child support agency operates an effective and efficient program that complies with all federal and state laws, regulations, and directives, including the directive to hire sufficient staff.

(c) The director shall submit any forms intended for use in court proceedings to the Judicial Council for approval at least six months prior to the implementation of the use of the forms.

(d) In adopting the forms, policies, and procedures, the director shall consult with the California Family Support Council, the California State Association of Counties, labor organizations, custodial and noncustodial parent advocates, child support commissioners, family law facilitators, and the appropriate committees of the Legislature.

(e) (1) Notwithstanding the provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, through June 30, 2001, the department may implement the applicable provisions of this division through family support division letters or similar instructions from the director.

(2) The department shall adopt regulations implementing the forms, policies, and procedures established pursuant to this section not later than July 1, 2001. The director may delay implementation of any of these regulations in any county for such time as the director deems necessary for the smooth transition and efficient operation of a local child support agency, but implementation shall not be delayed beyond the time at which the transition to the new county department of child support services is completed. The department may adopt regulations to implement this division in accordance with the Administrative Procedure Act. The adoption of any emergency regulation filed with the Office of Administrative Law on or before January 1, 2003, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. These emergency regulations shall remain in effect for no more than 180 days.

SEC. 11. Section 17310 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17310. (a) The director shall formulate, adopt, amend, or repeal regulations and general policies affecting the purposes, responsibilities, and jurisdiction of the department that are consistent with law and necessary for the administration of the state plan for securing child support and enforcing spousal support orders and determining paternity.

(b) Notwithstanding any other provision of law, all regulations, including, but not limited to, regulations of the State Department of Social Services and the State Department of Health Services, relating to child support enforcement shall remain in effect and shall be fully enforceable by the department. The department may readopt,

amend, or repeal the regulations in accordance with Section 17312 as necessary and appropriate.

SEC. 12. Section 17312 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17312. (a) The department shall adopt regulations, orders, or standards of general application to implement, interpret, or make specific the law enforced by the department. Regulations, orders, and standards shall be adopted, amended, or repealed by the director only in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In adopting regulations, the department shall strive for clarity of language that may be readily understood by those administering public social services or subject to those regulations.

(c) The rules of the department need not specify or include the detail of forms, reports, or records, but shall include the essential authority by which any person, agency, organization, association, or institution subject to the supervision or investigation of the department is required to use, submit, or maintain the forms, reports, or records.

(d) The department's regulations and other materials shall be made available pursuant to the California Code of Regulations and in the same manner as are materials of the State Department of Social Services under the provisions of Section 205.70 of Title 45 of the Code of Federal Regulations.

SEC. 13. Section 17400 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17400. (a) Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) Actions brought by the local child support agency to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The local child support agency's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the

effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(c) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 17404. The Judicial Council may combine the summons and complaint in a single form.

(2) The simplified complaint form shall provide the defendant with notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the income or income history of the defendant as known to the local child support agency. If the defendant's income or income history is unknown to the local child support agency, the complaint shall inform the defendant that income shall be presumed in an amount that results in a court order equal to the minimum basic standard of adequate care provided in Section 11452 of the Welfare and Institutions Code unless information concerning the defendant's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the defendant that the proposed judgment will become effective if he or she fails to file an answer with the court within 30 days of service.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the local child support agency or the Attorney General in all cases brought under this section or Section 17404.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However,

failure to serve the answer form may be used as evidence in any proceeding under Section 17432 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the local child support agency with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the local child support agency or the superior court clerk.

(d) In any action brought or enforcement proceedings instituted by the local child support agency pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the local child support agency at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(e) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the agencies established by this section a notice, in clear and simple language prescribed by the Director of Child Support Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals, whether or not they are recipients of public assistance.

(f) (1) In any action to establish a child support order brought by the local child support agency in the performance of duties under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under this code.

(2) The local child support agency shall file a motion for an order for temporary support within the following time limits:

(A) If the defendant is the mother, a presumed father under Section 7611, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(B) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

(3) If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

(4) If the local child support agency fails to file a motion for an order for temporary support within time limits specified in this section, the local child support agency shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

(5) Except as provided in Section 17304, nothing in this section prohibits the local child support agency from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the Department of Child Support Services.

(6) Nothing in this section shall otherwise limit the ability of the local child support agency from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

(g) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the department for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the local child support agency of an initial order for child support that may include medical support or that is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, and (5) the transfer of the accounts receivable management of child support delinquencies to the Franchise Tax Board under Section 17501 in support of the local child support agency.

(h) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(i) (1) The local child support agency is the public agency responsible for administering wage withholding for current support the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(2) Nothing in this section shall limit the authority of the local child support agency granted by other sections of this code or

otherwise granted by law, except to the extent that the law is inconsistent with the transfer of the responsibility for accounts receivable management of delinquent child support to the Franchise Tax Board.

(j) In the exercise of the authority granted under this article, the local child support agency may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under this code, or other proceeding in which child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the local child support agency may request any relief that is appropriate that the local child support agency is authorized to seek.

(k) The local child support agency shall comply with all regulations and directives established by the department that set time standards for responding to requests for assistance in locating noncustodial parents, establishing paternity, establishing child support awards, and collecting child support payments.

(*l*) As used in this article, medical support activities that the local child support agency is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(m) (1) Notwithstanding any other law, venue for an action or proceeding under this division shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the local child support agency, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477 of the Welfare and Institutions Code.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(n) The local child support agency of one county may appear on behalf of the local child support agency of any other county in an action or proceeding under this part.

SEC. 14. Section 17404 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17404. (a) Notwithstanding any other statute, in any action brought by the local child support agency 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 local child support agency 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 17402, 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 other provisions of this 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 other provisions of this 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 local child support agency 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 local child support agency in conjunction with the notice required by subdivision (e) of Section 17406. 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 local child support agency 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 local child support agency or a noticed motion filed by either parent. The local child support agency shall serve a copy of any order for joinder of a parent obtained by the local child support agency'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 local child support agency 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 local child support agency 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 this code. Except as otherwise provided by law, the local child support agency 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 local child support agency close his or her case and the case has been closed in accordance with state and federal regulation or policy.

(f) (1) A parent who has requested or is receiving support enforcement services of the local child support agency may take independent action to modify a support order made pursuant to this section while support enforcement services are being provided by the local child support agency. The parent shall serve the local child support agency with notice of any action filed to modify the support order and provide the local child support agency 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 local child support agency may take independent action to enforce a support order made pursuant to this section while support enforcement services are being provided by the local child support agency with the written consent of the local child support agency. At least 30 days prior to filing an independent enforcement action, the parent shall provide the local child support agency 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 local child support agency shall either provide written consent for the parent to proceed with the independent enforcement action or notify the parent that the local child support agency objects to the parent filing the proposed independent enforcement action. The local child support agency may object only if the local child support agency 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 local child support agency. If the local child support agency does not respond to the parent's written notice within 30 days, the local child support agency shall be deemed to have given consent.

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

(g) Any notice from the local child support agency 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 of the Welfare and Institutions Code.

(i) The Judicial Council shall develop forms to implement this section.

SEC. 15. Section 17406 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17406. (a) In all actions involving paternity or support, including, but not limited to, other proceedings under this code, and under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, the local child support agency and the 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 local child support agency or Attorney General and any person by virtue of the action of the local child support agency or the Attorney General in carrying out these statutory duties.

(b) Subdivision (a) is declaratory of existing law.

(c) In all requests for services of the local child support agency or Attorney General pursuant to Section 17400 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 local child support agency or Attorney General shall give notice to the individual requesting services or on whose behalf services have been requested that the local child support agency 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 local child support agency or Attorney General and those persons, and that no such representation or relationship shall arise if the local child support agency 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 local child support agency or Attorney General may provide support enforcement services to the other parent in the future.

(d) The local child support agency or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 17400 who have not otherwise been provided that notice, not later than the date of the next annual notice required

under Section 11476.2 of the Welfare and Institutions Code. This notice shall include notification to the recipient of services under Section 17400 that the recipient may inspect the clerk's file at the county clerk's office, and that, upon request, the local child support agency, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The local child support agency 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 17400, as specified in paragraph (2) of subdivision (e) of Section 17404. A notice shall accompany the complaint that informs the recipient that the local child support agency or Attorney General may enter into a stipulated order resolving the complaint, and that the recipient shall assist the prosecuting attorney, by sending all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f) (1) The local child support agency or Attorney General shall provide written notice to recipients of services under Section 17400 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 local child support agency 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, or as part of an action to establish paternity or otherwise, 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 local child support agency 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 local child support agency 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 local child support agency or Attorney General receives notice of the hearing less than seven days prior to the hearing, within two days of the receipt by the local child support agency or Attorney General of the notice of the hearing.

(5) The local child support agency or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the local child support agency or Attorney General has current addresses for recipients of support enforcement services.

(g) The local child support agency or Attorney General shall give notice to recipients of services under Section 17400 of every order obtained by the local child support agency 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 local child support agency 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 local child support agency or Attorney General, by sending a copy of the order to the recipient within the timeframe specified by federal law after the local child support agency 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, the notice shall be made in compliance with the requirements of that chapter. The failure of the local child support agency or Attorney General to comply with this subdivision shall not affect the validity of any order.

(h) The local child support agency or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the local child support agency 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 17400 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 17400 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 local child support agency or Attorney General shall not submit to the court for approval a stipulation to establish or modify a support order in the action without first obtaining the signatures of all parties to the action, their attorneys of record, or persons authorized to act on their behalf. Any stipulation approved by the court in violation of this subdivision shall be void.

(k) The local child support agency 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 17400 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 17400 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 17400 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, 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. 16. Section 17415 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17415. (a) It shall be the duty of the county welfare department to refer all cases where a parent is absent from the home, or where the parents are unmarried and parentage has not been established by the completion and filing of a voluntary declaration of paternity pursuant to Section 7573 or a court of competent jurisdiction, to the local child support agency immediately at the time the application for public assistance, including Medi-Cal benefits, or certificate of eligibility, is signed by the applicant or recipient, except as provided in Section 11477.04 of the Welfare and Institutions Code. If an applicant is found to be ineligible, the applicant shall be notified in writing that the referral of the case to the local child support agency may be terminated at the applicant's request. The county welfare department shall cooperate with the local child support agency and shall make available to him or her all pertinent information as provided in Section 17505.

(b) Upon referral from the county welfare department, the local child support agency shall investigate the question of nonsupport or paternity and shall take all steps necessary to obtain child support for the needy child, enforce spousal support as part of the state plan under Section 17604, and determine paternity in the case of a child born out of wedlock. Upon the advice of the county welfare department that a child is being considered for adoption, the local child support agency shall delay the investigation and other actions with respect to the case until advised that the adoption is no longer under consideration. The granting of public assistance or Medi-Cal benefits to an applicant shall not be delayed or contingent upon investigation by the local child support agency.

(c) In cases where Medi-Cal benefits are the only assistance provided, the local child support agency shall provide child and spousal support services unless the recipient of the services notifies the local child support agency that only services related to securing health insurance benefits are requested.

(d) Where a court order has been obtained, any contractual agreement for support between the local child support agency or the county welfare department and the noncustodial parent shall be deemed null and void to the extent that it is not consistent with the court order.

(e) Whenever a family which has been receiving public assistance, including Medi-Cal, ceases to receive assistance, including Medi-Cal, the local child support agency shall, to the extent required by federal regulations, continue to enforce support payments from the noncustodial parent until such time as the individual on whose behalf the enforcement efforts are made sends written notice to the local child support agency requesting that enforcement services be discontinued.

(f) The local child support agency shall, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent. In individual cases where utilization of reciprocal arrangements has proven ineffective, the local child support agency may forward to the Attorney General a request to utilize federal courts in order to obtain or enforce orders for child or spousal support. If reasonable efforts to collect amounts assigned pursuant to Section 11477 of the Welfare and Institutions Code have failed, the local child support agency may request that the case be forwarded to the Treasury Department for collection in accordance with federal regulations. The Attorney General, where appropriate, shall forward these requests to the Secretary of Health and Human Services, or a designated representative.

SEC. 17. Section 17430 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17430. (a) Notwithstanding any other provision of law, in any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, a judgment shall be entered if the defendant

fails to file an answer or otherwise appear in the action within 30 days of service of process upon the defendant.

(b) If the defendant fails to file an answer with the court within 30 days of having been served as specified in subdivision (c) of Section 17400, or at any time before the default judgment is entered, the proposed judgment shall become effective unless the local child support agency has filed a declaration and amended proposed judgment pursuant to subdivision (c).

(c) If the local child support agency receives additional financial information within 30 days of service of the complaint and proposed judgment on the defendant and the additional information would result in a support order that is different from the amount in the proposed judgment, the local child support agency shall file a declaration setting forth the additional information and an amended proposed judgment. The declaration and amended proposed judgment shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law. The defendant's time to answer or otherwise appear shall be extended to 30 days from the date of service of the declaration and amended proposed judgment.

(d) Upon entry of the judgment, the clerk of the court shall mail by first-class mail, postage prepaid, a notice to the defendant that his or her default has been taken and that the proposed judgment has been entered.

SEC. 18. Section 17500 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17500. (a) In carrying out its obligations under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the local child support agency shall have the responsibility for promptly and effectively collecting and enforcing child support obligations.

(b) The local child support agency is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). To enhance the promptness, efficiency, and effectiveness of wage withholding, the Franchise Tax Board shall issue wage withholding notices for current support, under the circumstances described in Section 17501 and consistent with Section 5246, in the name and on behalf of the local child support agency. Any information obtained by the Franchise Tax Board to administer Section 19271 of the Revenue and Taxation Code or any information sources available to the local child support agency under any federal or state law may be used by the Franchise Tax Board for this purpose.

SEC. 19. Section 17501 is added to the Family Code, to read:

17501. (a) Notwithstanding any other provision of law, on and after January 1, 2000, pursuant to a cooperative agreement entered into between the department and the Franchise Tax Board, the Franchise Tax Board shall have responsibility for accounts receivable management of child support delinquencies in support of the child

support activities of the Department of Child Support Services, local child support agencies, and subject to all federal and state laws, regulations, and directives relating to child support programs prescribed by Title IV-D of the federal Social Security Act.

(b) For purposes of this section, "child support delinquency" means an arrearage or otherwise past due amount that accrues when an obligor fails to make any court-ordered support payment when due, which is more than 60 days past due, and the aggregate amount of which exceeds one hundred dollars ($100).

(c) For purposes of this section, the responsibility of the Franchise Tax Board for "accounts receivable management" shall be in accordance with federal mandates under Title IV-D of the Social Security Act, state mandates, and regulations adopted by the department, and shall include the following:

(1) A management structure that implements policy and procedures consistent with all applicable federal and state mandates and regulations and control systems that result in compliance with these policies and procedures.

(2) Information technology applications, including hardware and software, necessary to:

(A) Route accounts, based on decision rules, through a sequence of actions most likely to result in collection of the account.

(B) Gather asset information from third-party sources including employers, financial institutions, credit bureaus, and parent locator services and take mandated actions or other actions that can be taken by a computer system in the most appropriate sequence for recovering child support delinquency payments.

(3) Personnel systems necessary to hire and train staff as well as to organize and direct their work for effective and efficient recovery of child support delinquency payments.

(4) Customer service systems including telephone, written, and other communication mechanisms giving delinquent obligors methods to contact the Franchise Tax Board to resolve questions and other issues arising solely from the Franchise Tax Board's actions on their delinquent account.

(5) Actions on any child support delinquency account transferred to the Franchise Tax Board taken by computer or by staff as necessary for recovering delinquent child support payments as follows:

(A) Issuing and modifying earnings assignment orders in the name and on behalf of the local child support agency, pursuant to Section 5246, as necessary in order for the Franchise Tax Board to take collection actions to recover delinquent child support payments. In no event shall any modification to a notice of assignment reduce the current support amount to be withheld below the amount ordered by the court.

(B) Working with obligors and negotiating a payment schedule to the extent allowed by state and federal law and in accordance with regulations established by the department.

(C) Consulting information sources and third parties to locate obligors and their assets.

(D) Coordinating with the counties and the department for withholding issuance, renewal, or suspension of licenses or passports as the process relates to delinquent child support obligors.

(E) Filing bankruptcy or estate claims, and filing liens in civil actions.

(F) Issuing levies.

(G) Issuing warrants to direct a levying officer to seize and sell property of the obligor or other actions that may be taken by a levying officer.

(H) Monitoring paying accounts and keeping local child support agencies informed as to any payments received by the Franchise Tax Board and status thereof.

(I) Coordinating with the counties to refer obligors to the county when a court action may be an appropriate course of action as so deemed by the county.

(J) Taking any other mandated actions directed by the department necessary for the effective and efficient recovery of delinquent child support payments.

(d) (1) The local child support agency shall transfer child support delinquencies to the Franchise Tax Board in the form and manner and at the time prescribed by the Franchise Tax Board pursuant to paragraph (2) of subdivision (a) of Section 19271 of the Revenue and Taxation Code.

(2) The department shall adopt regulations to establish a process pursuant to which a local child support agency may request and shall be allowed to rescind or otherwise recall the transfer of an account from the Franchise Tax Board under limited circumstances specified by the department.

(e) If a child support delinquency exists at the time a case is opened by the local child support agency, the responsibility for the enforcement and collection of the delinquency shall be transferred to the Franchise Tax Board no later than 30 days after receipt of the case by the local child support agency. Any reference to the local child support agency in connection with accounts receivable management of child support delinquencies shall be deemed a reference to the Franchise Tax Board.

(f) After a local child support agency transfers a delinquent child support obligation to the Franchise Tax Board pursuant to this section, the local child support agency shall continue to facilitate resolution of the child support obligation in coordination with the Franchise Tax Board. This transfer of responsibility for accounts receivable management is in support of the local child support agency solely for the administration of the enforcement and collection of child support delinquencies and shall not in any manner transfer any responsibilities the local child support agency may have and any responsibilities the Department of Child Support Services

may have as the Title IV-D agency. A child support delinquency, as specified in this section, shall be enforced and collected by the Franchise Tax Board in accordance with subdivision (c) and pursuant to Section 19271 of the Revenue and Taxation Code. The local child support agency shall be responsible for case management as described in subdivision (g).

(g) After a local child support agency transfers a case to the Franchise Tax Board for accounts receivable management, the local child support agency shall be responsible for providing case management services, which, only for purposes of cases transferred to the Franchise Tax Board includes, but is not limited to:

(1) Responding to communications from both custodial parents and noncustodial parents about case status, payment status, and other questions, and facilitating communication between the custodial or noncustodial parent and the Franchise Tax Board, as appropriate.

(2) Establishing, maintaining, and updating as appropriate case information relating to case status, account information, payment history, and other relevant case specific information.

(3) Responding to requests from custodial and noncustodial parents for modification of a support obligation pursuant to state and federal regulations, notifying the Franchise Tax Board of actions taken to modify a support obligation and, where appropriate, requesting the case be transferred back to the local child support agency from the Franchise Tax Board in accordance with subdivision (d).

(4) Pursuing appropriate enforcement mechanisms, within the timeframes and regulations prescribed by the department, which may include:

(A) Submittal of the delinquent case to the Internal Revenue Service Tax Refund Intercept Program.

(B) Submittal of the delinquent case to the Franchise Tax Board for the tax refund intercept program.

(C) Submittal of the delinquent case to the State License Match Program for suspension or revocation of licenses.

(D) Filing liens against a civil settlement in cases in which the noncustodial parent is a party.

(E) Referral of the delinquent case to the district attorney for criminal prosecution.

(F) Filing orders to show cause for civil contempt.

(G) Filing motions for an order of examination.

(H) Referral of delinquent cases to the United States Attorney for criminal prosecution in interstate matters.

(5) Any other activities prescribed by the department.

SEC. 20. Section 17600 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17600. (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 17704 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 statewide automated system, 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 17704, information on the local child support agency 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 local child support agency 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 local child support agency, 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, in addition to the information required by subdivision (b), the Department of Child Support Services shall collect, on a monthly basis, from each county that is participating in the state incentive program described in Section 17704, 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 local child support agency 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 local child support agency, 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 local child support agency 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 local child support agency 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, or at the time that the department determines that compliance with this subdivision is possible, whichever is earlier, each county that is participating in the state incentive program described in Section 17704 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 local child support agencies are unable to accurately collect and report the information or that collecting and reporting of the data by the local child support agencies 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 are 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 local child support agency.

(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 local child support agencies 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 2000–01 fiscal year to each member of a county board of supervisors, county executive officer, local child support agency, and the appropriate policy committees and fiscal committees of the Legislature by December 31, 2001. 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 17704 requires participating counties to report data to the department.

SEC. 21. Section 17602 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17602. (a) Not later than January 1, 2001, the department shall adopt performance standards, in consultation with local child support agencies, that each local child support agency is required to comply with on a quarterly basis. The performance standards shall include, at a minimum, measurements for each of the following:

(1) Percent of cases with a court order for current support.

(2) Percent of cases with collections of current support.

(3) Average amount collected per case for all cases with collections.

(4) Percent of cases with an order for arrears.

(5) Percent of cases with arrears collections.

(6) Percent of alleged fathers or obligors who were served with a summons and complaint to establish paternity or a support order during the period.

(7) Percent of children for whom paternity has been established during the period.

(8) Percent of cases that had a support order established during the period.

(9) Total child support dollars collected per $1.00 of total expenditure.

(10) Any other measurements that the director determines to be an appropriate determination of a local child support agency's performance.

(b) In determining the performance measures in subdivision (a), the department shall consider the total amount of uncollected child support arrearages that are realistically collectible. The director shall analyze, in consultation with local child support agencies and child support advocates, the current amount of uncollected child support arrearages statewide and in each county to determine the amount of child support that may realistically be collected. The director shall consider, in conducting the analysis, factors that may influence collections, including demographic factors such as welfare caseload, levels of poverty and unemployment, rates of incarceration of obligors, and age of delinquencies. The director shall use this analysis to establish program priorities as provided in paragraph (7) of subdivision (b) of Section 17306.

(c) The department shall use the performance-based data, and the criteria for that data, as set forth in Section 17600 to determine a local child support agency's performance measures for the quarter.

(d) The director shall adopt a three phase process to be used statewide when a local child support agency is out of compliance with the performance standards adopted pursuant to subdivision (a), or the director determines that the local child support agency is failing in a substantial manner to comply with any provision of the state plan, the provisions of this code, the requirements of federal law, the regulations of the department, or the cooperative agreement. The director shall adopt policies as to the implementation of each phase, including requirements for measurement of progress and improvement which shall be met as part of the performance improvement plan specified in paragraphs (1) and (2), in order to avoid implementation of the next phase of compliance. The director shall not implement any of these phases until July 1, 2001, or until six months after a local child support agency has completed its transition from the office of the district attorney to the new county department of child support services, whichever is later. The phases shall include the following:

(1) Phase I: Development of a performance improvement plan that is prepared jointly by the local child support agency and the department, subject to the department's final approval. The plan shall provide performance expectations and goals for achieving compliance with the state plan and other state and federal laws and regulations that must be reviewed and assessed within specific timeframes in order to avoid execution of Phase II.

(2) Phase II: Onsite investigation, evaluation and oversight of the local child support agency by the department. The director shall appoint program monitoring teams to make site visits, conduct educational and training sessions, and help the local child support agency identify and attack problem areas. The program monitoring

teams shall evaluate all aspects of the functions and performance of the local child support agency, including compliance with state and federal laws and regulations. Based on these investigations and evaluations, the program monitoring team shall develop a final performance improvement plan and shall oversee implementation of all recommendations made in the plan. The local child support agency shall adhere to all recommendations made by the program monitoring team. The plan shall provide performance expectations and compliance goals that must be reviewed and assessed within specific timeframes in order to avoid execution of Phase III.

(3) Phase III: The director shall assume, either directly or through agreement with another entity, responsibility for the management of the child and spousal support enforcement program in the county until such time as the local child support agency provides reasonable assurances to the director of its intention and ability to comply. During the period of state management responsibility, the director or his or her authorized representative shall have all of the powers and responsibilities of the local child support agency concerning the administration of the program. The local child support agency shall be responsible for providing any funds as may be necessary for the continued operation of the program. If the local child support agency fails or refuses to provide these funds, including a sufficient amount to reimburse any and all costs incurred by the department in managing the program, the Controller may deduct an amount certified by the director as necessary for the continued operation of the program by the department from any state or federal funds payable to the county for any purpose.

(e) The director shall report in writing to the Legislature semiannually, beginning July 1, 2001, on the status of the state child support enforcement program. The director shall submit quarterly reports to the Legislature, Governor and public on progress of all local child support agencies in each performance measure, including identification of the local child support agencies that are out of compliance, the performance measures that they have failed to satisfy, and the performance improvement plan that is being taken for each.

SEC. 21.5. Section 17604 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session of the Legislature, is amended to read:

17604. (a) (1) If at any time the director considers any public agency, that is required by law, by delegation of the department, or by cooperative agreement to perform functions relating to the state plan for securing child and spousal support and determining paternity, to be failing in a substantial manner to comply with any provision of the state plan, the director shall put that agency on written notice to that effect.

(2) The state plan concerning spousal support shall apply only to spousal support included in a child support order.

(3) In this chapter the term spousal support shall include support for a former spouse.

(b) After receiving notice, the public agency shall have 45 days to make a showing to the director of full compliance or set forth a compliance plan that the director finds to be satisfactory.

(c) If the director determines that there is a failure on the part of that public agency to comply with the provisions of the state plan, or to set forth a compliance plan that the director finds to be satisfactory, or if the State Personnel Board certifies to the director that that public agency is not in conformity with applicable merit system standards under Part 2.5 (commencing with Section 19800) of Division 5 of Title 2 of the Government Code, and that sanctions are necessary to secure compliance, the director shall withhold part or all of state and federal funds, including incentive funds, from that public agency until the public agency shall make a showing to the director of full compliance.

(d) After sanctions have been invoked pursuant to subdivision (c), if the director determines that there remains a failure on the part of the public agency to comply with the provisions of the state plan, the director may remove that public agency from performing any part or all of the functions relating to the state plan.

(e) In the event of a federal determination to reduce or modify federal funding for the Title IV-A program as a result of improper or inadequate county administration of the child and spousal support enforcement program, the department shall pass on to the counties any federal sanction levied on or after January 1, 1991, regardless of the date of the underlying federal audit, except for any sanctions resulting from the 1986 audit or federal followup. For the purposes of this section, the date of levy is the date the federal government actually reduces, withholds, or otherwise modifies the state's funding.

(f) The sanction shall be assessed as follows:

(1) The state shall assume responsibility for 50 percent of the total federal sanction.

(2) Each county shall be assessed an amount equal to the amount of increased county costs which would occur based on application of Sections 15200 and 15204.2 of the Welfare and Institutions Code.

(3) For each county found to be out of compliance based on the reviews conducted pursuant to Section 17702, the county shall be assessed an amount equal to one-half the rate of the federal sanction multiplied by the county's total federal Title IV-A program funding.

(4) For each county found to be marginally in compliance based on the reviews conducted pursuant to Section 17702, the county shall be assessed an amount equal to one-quarter the rate of the federal sanction multiplied by the county's total federal Title IV-A program funding.

(5) In the event the amount of the federal sanction is less than the amount required to apply paragraphs (1), (2), (3), and (4), county liability under paragraph (4) shall be reduced accordingly. In the

event county liability under paragraph (4) is eliminated and the amount of the federal sanction is less than the amount required to apply paragraphs (1), (2), and (3), county liability under paragraph (3) shall be reduced accordingly.

(6) The review pursuant to Section 17702 which was conducted closest to the date the federal sanction was levied shall be used to determine which counties are out of compliance and marginally in compliance.

(g) There shall be established a sanction credit which shall consist of any net increase in state revenue resulting from any increase of more than 9 $^{3}/_{4}$ percent in distributed collections on behalf of families receiving CalWORKs for each of the previous three state fiscal years.

(1) The balance of the sanction after application of subdivision (f) shall be reduced by the amount of the sanction credit.

(2) In the event the sanction credit exceeds the balance of the sanction after application of paragraph (1), the amount exceeding the balance shall be used to reduce the liability of marginally compliant counties under paragraph (4) of subdivision (f). Any further balance shall be used to reduce the liability of out-of-compliance counties under paragraph (3) of subdivision (g).

(3) In the event the sanction credit does not fully offset the balance of the sanction after application of paragraph (1), the state shall be responsible for 50 percent of the unmet balance, and the remaining 50 percent shall be distributed to all counties in proportion to their total Title IV-A program funding.

(h) The sanction assessed a county pursuant to this section shall be levied as a general assessment against the county. Notwithstanding Section 17714, a county may use any funds paid to that county pursuant to Sections 17700 and 17710, over and above the county's cost of administering the child support program to supplant any county funds reduced under this section.

(i) In the event of any other audit or review that results in the reduction or modification of federal funding for the program under Part D (commencing with Section 652) of Subchapter IV of Title 42 of the United States Code, the sanction shall be assessed against those counties specifically cited in the federal findings in the amount cited in those findings.

(j) The department shall establish a process whereby any county assessed a portion of any sanction may appeal the department's decision.

(*l*) Nothing in this section shall be construed as relieving the board of supervisors of the responsibility to provide funds necessary for the continued operation of the state plan as required by law.

SEC. 22. Section 17700 is added to Article 4 (commencing with Section 17702) of Chapter 2 of the Family Code to read:

17700. (a) It is the intent of the Legislature for the department to allocate to counties funds as specified in this section to assist

counties to increase child support collections through the child support enforcement program.

(b) The funds may be used for the following purposes and in any manner that will enhance child support collections.

(1) To purchase equipment and fund staff to further a county's effort to automate its offices as long as the automation is in accordance with the Statewide Automated Child Support System being implemented statewide.

(2) To fund staff who will further the county's collection efforts.

(3) To match federal funds to increase court time given to child support, including, but not limited to, funding additional family law commissioner or referee positions which are authorized by law, renting or leasing additional space, funding additional support staff and litigant services, and obtaining additional equipment. More than one county may jointly fund a family support commissioner or referee position to serve the participating counties. For the 1996–97 and 1997–98 fiscal years, funds shall be made available to the extent appropriated by the Budget Act to the Judicial Council to implement Section 4251 of, and Division 14 (commencing with Section 10000). The Judicial Council shall allocate the funds to counties for the purpose of matching federal funds for the costs of commissioners, family law facilitators, and related costs. The Judicial Council may also use the funds to offset the nonfederal share of costs incurred for performing the duties specified in Section 4252. The funds may only be used to match federal funds to increase court time if the county does not decrease its current allocation of court time to child support cases or decrease the time more than in other areas under its plan for trial court funding. The funds allocated pursuant to this section and the federal matching funds for increased court time for child support cases shall be considered outside the requirements of trial court funding. Funds allocated to the Judicial Council shall not be subject to the requirements of subdivision (c).

(c) Counties may choose one of the following methods for obtaining these funds to increase child support collections:

(1) Matching funds method:

(A) It is the intent of the Legislature to appropriate the sum of ten million dollars ($10,000,000), or any higher amount specified in the annual Budget Act, from the General Fund to the State Department of Social Services. Within 60 days of the enactment of the annual Budget Act, any county choosing to apply for funds under this method shall submit to the department a plan specifying the amount of county match funds the county will provide, the amount of General Fund moneys the county is requesting, and the intended uses of the funds consistent with subdivision (b).

(B) The department shall allocate the funds to counties based on the amount each county has reported it is to match. In order to receive these funds, a county shall match every dollar of the General Fund money provided to the county with fifty cents ($0.50) of county

funds, which shall be used for the child support program. In the event that the department receives applications that exceed the total funds available, the department shall allocate the available funds among the applications based on collections-to-cost ratios.

(C) Funds expended to comply with Section 17714 shall qualify for this match.

(2) Loan method:

(A) The Director of Finance is authorized to transfer up to ten million dollars ($10,000,000), or any higher amount as may be specified in the annual Budget Act, from Item 5180-101-0001 to Item 5180-141-0001 of the annual Budget Act for allocation by the State Department of Social Services to county child support enforcement programs. There shall be no requirement for counties to match these funds, but the department shall take any steps necessary to ensure that the maximum amount of federal funds are available to match these funds.

(B) The department shall allocate these funds to counties based upon an approved application. In the event that the department receives applications that exceed the total funds available, the department shall allocate the available funds among the approved applications based on collections-to-cost ratios. In order to be approved, the application shall be signed by the chief administrative officer of the local child support agency and shall, at a minimum, specify:

(i) The county's estimate of the state share of baseline California Work Opportunity and Responsibility to Kids (CalWORKs) collections in the county for the state fiscal year in which the requested allocation will be spent. For purposes of this section, "baseline CalWORKs collections" means the collections that would be made by the county in the absence of this section. The department shall review the county's baseline CalWORKs and non-CalWORKs collections estimate and shall approve the estimate if it is reasonably consistent with recent trends and developments in the county.

(ii) The specific program activities for which the county proposes to use the funds. The county shall certify that these activities are in addition to the activities, or the level of activity, funded in the previous year.

(iii) The amount requested.

(iv) The county's estimate of the state share of increased CalWORKs and non-CalWORKs collections, minus any incentive paid to the county pursuant to Section 15200.8 of the Welfare and Institutions Code, anticipated to result from the activities identified in clause (ii). The department shall review this estimate and advise the county as to its reasonableness. For purposes of this section, "increased CalWORKs collections" means revenues above the county's approved estimate of baseline CalWORKs collections.

(v) A statement by the local child support agency that he or she understands that the incentives that would otherwise be paid to the

county in the second subsequent fiscal year will be reduced to recover any state costs that are not fully offset by increased revenues.

(C) The department shall approve applications with approved baseline CalWORKs collections and in which the collections-to-cost ratio derived by dividing the amounts estimated under clause (iv) of subparagraph (B) by the amount requested under clause (iii) of subparagraph (B) is equal to, or greater than, two times the statewide average comparable collections-to-cost ratio for the previous five years.

(D) At the end of the first quarter of the state fiscal year, following the second state fiscal year in which any county received an allocation pursuant to this section, the department shall estimate the total state share of CalWORKs collections by each county, minus each incentive paid to the county pursuant to Section 15200.8 of the Welfare and Institutions Code.

(E) For each of the four quarters following the first quarter of the second state fiscal year following the year in which a county receives an allocation pursuant to this section, the department shall reduce the incentive payment by one-fourth of the amount which the allocation to the county pursuant to this section for the previous state fiscal year exceeds the difference, if greater than zero, resulting from subtracting the state share of baseline CalWORKs collections specified in the county's application from the department's estimate of the state share of total collections.

(d) The department shall review and evaluate the program specified in this section and shall report to the Legislature by June 30, 2000. The report shall include recommendations for legislative changes needed to make the program more effective.

SEC. 23. Section 17704 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17704. (a) For the 1998–99 fiscal year the department shall pay to each county a child support incentive payment. Every county shall receive the federal child support incentive. A county shall receive the state child support incentive if it elects to do both of the following:

(1) Comply with the reporting requirements of Section 17600 while federal financial participation is available for collecting and reporting data.

(2) Comply with federal and state child support laws and regulations, or has a corrective action plan certified by the department pursuant to Section 17702. The combined federal and state incentive payment shall be 13.6 percent of distributed collections. If the amount appropriated by the Legislature for the state incentives is less than the amount necessary to satisfy each county's actual incentives pursuant to this section, each county shall receive its proportional share of incentives.

(b) (1) Beginning July 1, 1999, the department shall pay to each county a child support incentive for child support collections. Every county shall receive the federal child support incentive. The

combined federal and state incentive payments shall be 13.6 percent of distributed collections. In addition to the federal child support incentive, each county may also receive a state child support incentive. Subject to subdivision (c), a county shall receive the state child support incentive if it elects to do both of the following:

(A) Comply with the reporting requirements of Section 17600 while federal financial participation is available for collecting and reporting data.

(B) Be in compliance with federal and state child support laws and regulations, or have a performance improvement plan certified by the department pursuant to Section 17702.

(2) (A) For purposes of paragraph (1), the federal incentive component shall be each county's share of the child support incentive payments that the state receives from the federal government, based on the county's collections.

(B) (i) Effective July 1, 1999, and annually thereafter, state funds appropriated for child support incentives shall first be used to fund the administrative costs incurred by local child support agencies in administering the child support program, excluding automation costs as set forth in Section 10085 of the Welfare and Institutions Code, after subtracting all federal financial participation for administrative costs and all federal child support incentives received by the state and passed on to the local child support agencies. The department shall allocate sufficient resources to each local child support agency to fully fund the remaining administrative costs of its budget as approved by the director pursuant to paragraph (9) of subdivision (b) of Section 17306, subject to the appropriation of funding in the annual Budget Act. No later than January 1, 2000, the department shall identify allowable administrative costs that may be claimed for reimbursement from the state, which shall be limited to reasonable amounts in relation to the scope of services and the total funds available. If the total amount of administrative costs claimed in any year exceeds the amount appropriated in the Budget Act, the amount provided to local child support agencies shall be reduced by the percentage necessary to ensure that projected General Fund expenditures do not exceed the amount authorized in the Budget Act.

(ii) Effective July 1, 2000, and annually thereafter, after allowable administrative costs are funded under clause (i), the department shall use any remaining incentive funds appropriated from the prior fiscal year which are hereby reappropriated to implement an incentive program that rewards up to 10 local child support agencies in each year, based on either their welfare and postwelfare collections or their increase in performance over the prior year. The welfare and postwelfare collections standard shall be based on the following for each local child support agency: (I) collections on behalf of previously aided families that received CalWORKs benefits and are no longer receiving benefits divided by the total number of

those families; and (II) collections that are used to reduce or repay aid that is paid pursuant to Article 6 (commencing with Section 11450) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, divided by the total aid paid out by the county under that article. The performance improvement standard shall measure the percent improvement for each local child support agency in the two categories of collections over the prior year. The department shall determine the number of local agencies that receive state incentive funds under this program, subject to a maximum of five agencies under the welfare and postwelfare standard and five agencies under the increase in performance over the prior year standard, and shall determine the amount received by each local agency based on the availability of funds and each local child support agency's proportional share of distributed collections. When the California Child Support Automation System is operational, the postwelfare collections standard shall be collections on behalf of previously aided families that received CalWORKs benefits after December 31, 1997, and are no longer receiving benefits, divided by the total number of those families.

(iii) Any funds received pursuant to this subdivision shall be used only for child support enforcement activities.

(c) (1) Beginning October 1, 1999, any county whose welfare performance score is in the bottom quartile of all counties and whose rate of improvement over the prior year is less than the rate of improvement of the top quartile of counties in terms of their rates of improvement shall receive its state incentive only upon accepting technical assistance from the department, as set forth in paragraph (3).

(2) The welfare performance score for each county is calculated by dividing the county's collections on behalf of children receiving CalWORKs benefits pursuant to Article 6 (commencing with Section 11450) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code by the county's average CalWORKs caseload.

(3) The department, in consultation with experts from other counties, as appropriate, shall conduct a program review of the county's child support program, which shall include a review of the county's management practices, and provide technical assistance. If the county chooses to receive its state incentives under this section, the county shall comply with the recommendations of this review.

(d) Each county shall continue to receive its federal child support incentive funding whether or not it elects to participate in the state child support incentive funding program.

(e) The department shall provide incentive funds pursuant to this section only during any fiscal year in which funding is provided for that purpose in the Budget Act.

SEC. 24. Section 17706 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17706. It is the intent of the Legislature to encourage counties to elevate the visibility and significance of the child support enforcement program in the county. To advance this goal, effective July 1, 2000, the counties with the 10 highest welfare and postwelfare collections standards pursuant to clause (ii) of subparagraph (B) of paragraph (2) of subdivision (b) of Section 17704 shall receive an additional 5 percent of the state's share of those counties' collections that are used to reduce or repay aid that is paid pursuant to Article 6 (commencing with Section 11450) or Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. The counties are encouraged to use the increased recoupment to continue to increase child support collections in the county.

SEC. 24.5. Section 17710 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session of the Legislature, is amended to read:

17710. (a) Each county shall be responsible for any administrative expenditures for administering the child support program not covered by federal and state funds.

(b) Notwithstanding subdivision (a), effective July 1, 1991, to June 30, 1992, inclusive, counties shall pay the nonfederal share of the administrative costs of conducting the reviews required under Section 15200.8 of the Welfare and Institutions Code from the savings counties will obtain as a result of the reduction in the maximum aid payments specified in Section 11450. Effective July 1, 1992, to June 30, 1993, inclusive, the state shall pay the nonfederal share of administrative costs of conducting the reviews required under Section 15200.8 of the Welfare and Institutions Code. Funding for county costs after June 30, 1993, shall be subject to the availability of funds in the annual Budget Act.

(c) If the federal government imposes a penalty on California's child support program for the failure to meet the October 1, 1997, deadline for the implementation of an automated child support enforcement system required by the federal Family Support Act of 1988 (P.L. 100-485), no portion of any penalty imposed by the federal government from October 1, 1997, to the date of enactment of the act adding this subdivision shall be assessed against Los Angeles County.

SEC. 25. Section 19271 of the Revenue and Taxation Code, as amended by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

19271. (a) (1) For purposes of this article:

(A) "Child support delinquency" means a delinquency defined in Section 17501 of the Family Code.

(B) "Earnings" may include the items described in Section 5206 of the Family Code.

(2) In order to manage the growth in the number of delinquencies transferred, the Franchise Tax Board may phase in the transfers over a period of 36 months ending on December 31, 2002. The Legislature anticipates that the Franchise Tax Board's systems necessary to

accommodate the augmented collection activities will be operational by July 1, 2001. The Franchise Tax Board shall work with the Department of Child Support Services to coordinate the phasein, focusing on needed coordination with the transition of the local child support agency in each county from the office of the district attorney to the new county department of child support services.

(3) At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board shall mail notice of the amount due to the obligated parent at the last known address and advise the obligated parent that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the local child support agency to resolve the disagreement.

(b) (1) (A) Except as otherwise provided in subparagraph (B), when a delinquency is transferred to the Franchise Tax Board pursuant to Section 17501 of the Family Code, the amount of the child support delinquency shall be collected by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, except that 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 is prohibited. Any levy or other withholding of earnings of an employee by the Franchise Tax Board shall be made accordance with Section 5246 of the Family Code. Any other law providing for the collection of a delinquent personal income tax liability shall apply to any delinquency transferred under Section 17501 of the Family Code in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article.

(B) When a delinquency is transferred to the Franchise Tax Board pursuant to Section 17501 of the Family Code, or at any time thereafter, if the obligated parent owes a delinquent personal income tax liability, the Franchise Tax Board shall not engage in, or shall cease, any involuntary collection action to collect the delinquent personal income tax liability, until the child support delinquency is paid in full. At any time, however, the Franchise Tax Board may mail any other notice to the taxpayer for voluntary payment of the delinquent personal income tax liability if the Franchise Tax Board determines that collection of the delinquent personal income tax liability will not jeopardize collection of the child support delinquency. However, the Franchise Tax Board may engage in the collection of a delinquent personal income tax liability if the obligor has entered into a payment agreement for the child support delinquency and is in compliance with that agreement, and the Franchise Tax Board determines that collection of the delinquent

personal income tax liability would not jeopardize payments under the child support payment agreement.

(C) For purposes of subparagraph (B):

(i) "Involuntary collection action" includes those actions authorized by Section 18670, 18670.5, 18671, or 19264, by Article 3 (commencing with Section 19231), or by Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

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

(iii) "Voluntary payment" means any payment made by obligated parents in response to any notice for voluntary payment mailed by the Franchise Tax Board.

(2) Any compensation, fee, commission, expense, or any other fee for service incurred by the Franchise Tax Board in the collection of a child support delinquency authorized under this article shall not be an obligation of, or collected from, the obligated parent. A transferred child support delinquency shall be final and due and payable to the State of California upon written notice to the obligated parent by the Franchise Tax Board.

(3) For purposes of administering this article:

(A) This chapter and Chapter 7 (commencing with Section 19501) shall apply, except as otherwise provided by this article.

(B) Any services, information, or enforcement remedies available to a local child support agency or the Title IV-D agency in collecting child support delinquencies or locating absent or noncustodial parents shall be available to the Franchise Tax Board for purposes of collecting child support delinquencies under this article, including, but not limited to, any information that may be disclosed by the Franchise Tax Board to the California Parent Locator Service under Section 19548. However, in no event shall the Franchise Tax Board take any additional enforcement remedies if a court has ordered an obligor to make scheduled payments on a child support arrearages obligation and the parent is in compliance with that order.

(C) A request by the Franchise Tax Board for information from a financial institution shall be treated in the same manner and to the same extent as a request for information from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code for purposes of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code (relating to governmental access to financial records), notwithstanding any other provision of law which is inconsistent or contrary to this paragraph.

(D) The amount to be withheld in an order and levy to collect child support delinquencies under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the

Code of Civil Procedure is the amount required to be withheld pursuant to an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

(E) Nothing in this article shall be construed to modify the tax intercept provisions of Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Part 2 of the Code of Civil Procedure.

(c) Interest on the delinquency shall be computed pursuant to Section 685.010 of the Code of Civil Procedure.

(d) (1) In no event shall a collection under this article be construed to be a payment of income taxes imposed under this part.

(2) In the event an obligated parent overpays a liability imposed under this part, the overpayment shall not be credited against any delinquency collected pursuant to this article. In the event an overpayment of a liability imposed under this part is offset and distributed to a local child support agency pursuant to Sections 12419.3 and 12419.5 of the Government Code or Section 708.740 of the Code of Civil Procedure, and thereby reduces the amount of the referred delinquency, the local child support agency shall immediately notify the Franchise Tax Board of that reduction, unless the Franchise Tax Board directs otherwise.

(e) (1) The Franchise Tax Board shall administer this article, in conjunction with regulations adopted by the Department of Child Support Services in consultation with the Franchise Tax Board, including those set forth in Section 17306 of the Family Code.

(2) The Franchise Tax Board may transfer to or allow a local child support agency to retain a child support delinquency for a specified purpose for enforcement and collection where the Franchise Tax Board determines, pursuant to regulations established by the Department of Child Support Services, that the transfer or retention of the delinquency for the purpose so specified will enhance the collectibility of the delinquency.

(3) The Franchise Tax Board, in coordination with the local child support agency, shall seek full compliance by the obligor with the child support order. The Franchise Tax Board, in coordination with the local child support agency and the Department of Child Support Services, shall pursue resolution of any issues regarding wage assignments and shall modify or replace as necessary any administratively county-issued wage assignments to achieve total resolution of the child support obligation.

(f) Except as otherwise provided in this article, any child support delinquency transferred to the Franchise Tax Board pursuant to this article shall be treated as a child support delinquency for all other purposes, and any collection action by the local child support agency or the Franchise Tax Board with respect to any delinquency referred pursuant to this article shall have the same priority against attachment, execution, assignment, or other collection action as is provided by any other provision of state law.

(g) Except as otherwise specifically provided in subparagraph (B) of paragraph (1) of subdivision (b), the child support collection activities authorized by this article shall not interfere with the primary mission of the Franchise Tax Board to fairly and efficiently administer the Revenue and Taxation Code for which it is responsible.

(h) Information disclosed to the Franchise Tax Board shall be considered information that may be disclosed by the Franchise Tax Board under the authority of Section 19548 and may be disseminated by the Franchise Tax Board accordingly for the purposes specified in Sections 17505 and 17506 of the Family Code (in accordance with, and to the extent permitted by, Section 17514 of the Family Code and any other state or federal law).

(i) A local child support agency may not apply to the Department of Child Support Services for an exemption from the transfer of responsibilities and authorities to the Franchise Tax Board under the Family Code or participation under Section 19271.6.

(j) Except in those cases meeting the specified circumstances described in the regulations and in accordance with the process prescribed in paragraph (2) of subdivision (d) of Section 17501 of the Family Code, a local child support agency shall not withdraw, rescind, or otherwise recall the transfer of a child support delinquency transferred to the Franchise Tax Board.

SEC. 26. Section 19272 of the Revenue and Taxation Code, as amended by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

19272. (a) Any child support delinquency collected by the Franchise Tax Board, including those amounts that result in overpayment of a child support delinquency, shall be deposited in the State Treasury, after clearance of the remittance, to the credit of the Special Deposit Fund and distributed as specified by interagency agreement executed by the Franchise Tax Board and the State Department of Social Services, with the concurrence of the Controller. Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Special Deposit Fund pursuant to this article are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions.

(b) When a child support delinquency, or any portion thereof, has been collected by the Franchise Tax Board pursuant to this article, the local child support agency shall be notified that the delinquency or some portion thereof has been collected and shall be provided any other necessary relevant information requested.

(c) The referring local child support agency shall receive credit for the amount of collections made pursuant to the referral, including credit for purposes of the child support enforcement incentives pursuant to Section 17704 of the Family Code. Collection costs incurred by the Franchise Tax Board shall be paid by federal reimbursement with any balance to be paid from the General Fund.

(d) For amounts to be paid as a result of the Franchise Tax Board's activities taken pursuant to this chapter or Section 17501 of the Family Code, the Franchise Tax Board shall notify the obligor or third party to make the required payment directly to the local child support agency that referred the delinquency to the Franchise Tax Board for deposit, cashiering, and disbursement of the payment, regardless of the form and manner for making the payments, including electronic means. The Franchise Tax Board may, subject to approval by the Department of Child Support Services, phase in this responsibility for the local child support agency to deposit, cashier, and disburse payments collected pursuant to the Franchise Tax Board accounts receivable management functions only to the extent necessary to ensure that the local child support agency is capable of accepting payment in the form and manner provided.

(e) When the statewide disbursement unit is operational, the obligors and third parties shall be directed to make child support payments to that unit instead of the counties, in accordance with the Department of Child Support Services regulations.

SEC. 27. Section 19275 is added to the Revenue and Taxation Code, to read:

19275. For purposes of Parts 10 (commencing with Section 17001), 10.5 (commencing with Section 20501), and 11 (commencing with Section 23001), any reference to the district attorney or counties, the State Department of Social Services, or the Statewide Automated Child Support System, as it relates to the collection, enforcement, or accounts receivable management of child support under the Family Code or the Welfare and Institutions Code shall mean the local child support agency, the Department of Child Support Services, and the California Child Support Automation System, respectively, in keeping with the changes and transition of authority and responsibilities as required under the Family Code and the Welfare and Institutions Code.

SEC. 28. Section 1088.8 of the Unemployment Insurance Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

1088.8. (a) Effective January 1, 2001, any service-recipient, as defined in subdivision (b), who makes or is required to make a return to the Internal Revenue Service, in accordance with paragraph (A) of subdivision (a) of Section 6041 of the Internal Revenue Code (relating to payments made to a service-provider as compensation for services) shall file with the department information as required under subdivision (c).

(b) For purposes of this section:

(1) "Service-recipient" means any individual, person, corporation, association, or partnership, or agent thereof, doing business in this state, deriving trade or business income from sources within this state, or in any manner in the course of a trade or business subject to the laws of this state. "Service-recipient" also includes the

State of California or any political subdivision thereof, including the Regents of the University of California, any charter city, or any political body not a subdivision or agency of the state, and any person, employee, department, or agent thereof.

(2) "Service-provider" means an individual who is not an employee of the service-recipient for California purposes and who received compensation or executes a contract for services performed for that service-recipient within or without the state.

(c) Each service-recipient shall report all of the following information to the department, within 20 days of the earlier of first making payments that in the aggregate equal or exceed six hundred dollars ($600) in any year to a service-provider, or entering into a contract or contracts with a service-provider providing for payments that in the aggregate equal or exceed six hundred dollars ($600) in any year:

(1) The full name and social security number of the service-provider.

(2) The service-recipient's name, business name, address, and telephone number.

(3) The service-recipient's federal employer identification number, California state employer account number, social security number, or other identifying number as required by the Employment Development Department in consultation with the Franchise Tax Board.

(4) The date the contract is executed, or if no contract, the date payments in the aggregate first equal or exceed six hundred dollars ($600).

(5) The total dollar amount of the contract, if any, and the contract expiration date.

(d) The department shall retain information collected pursuant to this section until November 1 following the tax year in which the contract is executed, or if no contract, the tax year in which the aggregate payments first equal or exceed six hundred dollars ($600).

(e) Information obtained by the department pursuant to this section may be released only for purposes of establishing, modifying, or enforcing child support obligations under Section 17400 of the Family Code and for child support collection purposes authorized under Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of the Revenue and Taxation Code, or to the Franchise Tax Board for tax enforcement purposes or for administering the provisions of the Family Code.

(f) This section shall become operative on January 1, 2001.

SEC. 29. Section 15200.81 of the Welfare and Institutions Code, as amended by Section 34 of Chapter 147 of the Statutes of 1999, is repealed.

SEC. 30. Section 18205 of the Welfare and Institutions Code, as added by Chapter 606 of the Statutes of 1997, is amended and renumbered to read:

18205.5. The Director of Child Support Services may, pursuant to this article, approve county demonstration projects to provide employment and training services to nonsupporting noncustodial parents of children who are recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3. In a county operating a demonstration project pursuant to this section, the superior court may order a nonsupporting noncustodial parent of a child receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 to participate, as appropriate, in job training, job search, vocational rehabilitation, and other work activities, as well as in parental development training. The superior court county department of child support services, and the county welfare department, in a demonstration county, shall all agree to cooperate in the operation of the demonstration project.

CHAPTER 481

An act to amend Section 149.1 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 149.1 of the Streets and Highways Code is amended to read:

149.1. (a) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the San Diego Association of Governments (SANDAG) may conduct, administer, and operate a congestion pricing and transit development demonstration program on the Interstate Highway Route 15 (I-15) high-occupancy vehicle expressway. The program, under the circumstances described in subdivision (b), may direct and authorize the entry and use of the I-15 high-occupancy vehicle lanes by single-occupant vehicles during peak periods, as defined by SANDAG, for a fee. The amount of the fee shall be established from time to time by SANDAG, and collected in a manner determined by SANDAG.

(b) Implementation of the demonstration program is subject to each of the following mandatory conditions:

(1) Approval of the program by the United States Department of Transportation shall be obtained before the project is implemented.

(2) Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, shall be maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and SANDAG that is based on

operating conditions of the high-occupancy vehicle lanes, Level of Service D shall be permitted on the high-occupancy vehicle lanes. The department and SANDAG shall evaluate the impacts of these levels of service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes, prior to January 1, 2002. Continuation of Level of Service D operating conditions after January 1, 2002, shall be subject to a written agreement between the department and SANDAG. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours.

(c) Single-occupant vehicles that are certified or authorized by SANDAG for entry into, and use of, the I-15 high-occupancy vehicle lanes are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) SANDAG shall carry out the program in cooperation with the department, and shall consult the department in the operation of the project and on matters related to highway design and construction. With the assistance of the department, SANDAG shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles.

(e) (1) Agreements between SANDAG, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the demonstration program, including clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to SANDAG for the program by the federal government, or other funding sources that are not otherwise available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the demonstration program. Reimbursement for SANDAG's program-related planning and administrative costs in the first year of operation of the program shall not exceed 5 percent of the revenues generated, and shall not exceed 3 percent of revenues for any year thereafter.

(2) All remaining revenue shall be used in the I-15 corridor exclusively for (A) the improvement of transit service, including, but not limited to, support for transit operations, and (B) high-occupancy vehicle facilities and shall not be used for any other purpose.

(f) SANDAG, the San Diego Metropolitan Transit Development Board, and the department shall cooperatively develop a single transit capital improvement plan for the I-15 corridor.

(g) On or before January 1, 2000, SANDAG shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program.

(h) This section shall remain in effect only until January 1, 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.

CHAPTER 482

An act to add and repeal Section 21810 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 21810 is added to the Vehicle Code, to read:

21810. (a) The driver of a vehicle overtaking a transit bus shall yield the right-of-way to the bus if all of the following conditions are present:

(1) The transit bus has entirely exited an active traffic lane to board or deboard passengers at a designated bus stop, and is attempting to reenter the lane from which it exited.

(2) Directional signals on the transit bus are flashing to indicate that the bus is preparing to merge with traffic.

(3) The transit bus is equipped with a yield right-of-way sign on the left rear of the bus. The sign shall be both of the following:

(A) Designed to warn a person operating a motor vehicle approaching the rear of the bus that the person is required to yield the right-of-way to the bus when the bus is entering traffic.

(B) Illuminated by a flashing light when the bus is signaling in preparation for entering a traffic lane after having stopped to receive or discharge passengers.

(b) Nothing in this section requires a transit agency to install the yield right-of-way sign described in paragraph (3) of subdivision (a).

(c) This section does not relieve the driver of a transit bus from the duty to drive the bus with due regard for the safety of all persons and property. Nothing in this section relieves the transit agency from complying with the standard of care for its passengers established by Section 2100 of the Civil Code.

(d) The provisions of this section are applicable to the Santa Cruz Metropolitan Transit District, the Orange County Transportation Authority, the Alameda-Contra Costa Transit District, and the Santa Clara County Transit District, if the governing board of the district approves a resolution, after a public hearing on the issue, requesting that this section be made applicable to it, and transmits a copy of the resolution to the commissioner.

(e) (1) Notwithstanding Section 7055.5 of the Government Code, on or before December 31, 2002, the commissioner, after consultation

with the participating transit agencies, participating law enforcement, and the advisory committee established pursuant to paragraph (3) of subdivision (a) of Section 34501 of the Vehicle Code, shall report to the Legislature on the effectiveness of the right-of-way for transit vehicles established by this section, including, but not limited to, any impact on the highway and local road safety and the efficiency of transit operations. The report shall recommend whether or not the right-of-way established by this section should be made permanent on a local basis, and whether it would be effective if implemented on a statewide basis.

(2) The commissioner, in consultation with the participating transit agencies, the California Transit Association, the advisory committee, and the participating local law enforcement agencies, shall identify the information required for preparation of the report required under paragraph (1). This information may include, but need not be limited to, all of the following:

(A) The total number of traffic collisions causing fatalities or injuries, and the number causing only property damage.

(B) Traffic congestion issues.

(C) Public opinion issues.

(D) Efficiency of transit operations.

(E) The public education program required under subdivision (i).

(3) The commissioner may develop a format and schedule for reporting the information identified under paragraph (2), and the local law enforcement agencies, transit agencies, and the California Transit Association shall provide the commission with the information by using that format and in compliance with that schedule.

(f) Each transit agency participating in the program shall undertake a public education program to inform motorists of the requirements imposed by this section.

(g) The base fine for a violation of subsection (a) is thirty-five dollars ($35).

(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. 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.

CHAPTER 483

An act to amend Sections 99, 103, 105, 221, 309, 7059, 7065, 7066, 7071, 7072, 7073, 7074, 7090, 7704, 7710, 7712, 8100, 8101, 8585.5, 8586, 8587, 8598, 8681.5, and 8837 of, to amend the headings of Chapter 8 (commencing with Section 7080) of Part 1.7 of, and Article 20 (commencing with Section 8599) of Chapter 2 of Part 3 of, Division 6 of, to add Sections 5521.6, 7057, 8599.4, and 8780.1 to, to repeal Sections 8587.2, 8693.5 and 8695.5 of, to repeal Part 1.5 (commencing with Section 7000) of Division 6 of, and to repeal and add Section 8587.1 of, the Fish and Game Code, relating to marine resources, and making an appropriation therefor.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 99 of the Fish and Game Code is amended to read:

99. "Restricted access," with regard to a marine fishery, means a fishery in which the number of persons who may participate, or the number of vessels that may be used in taking a specified species of fish, or the catch allocated to each fishery participant, is limited by statute or regulation.

SEC. 2. Section 103 of the Fish and Game Code is amended to read:

103. (a) Each of the commissioners shall receive one hundred dollars ($100) for each day of actual service performed in carrying out his or her official duties pursuant to law, but the amount of this compensation shall not exceed for any one commissioner the sum of five hundred dollars ($500) for any one calendar month. In addition to this compensation, the commissioners shall receive their actual and necessary expenses incurred in the performance of their duties.

(b) The compensation and expenses provided in this section shall be paid out of the Fish and Game Preservation Fund.

(c) Notwithstanding Section 7550.5 of the Government Code, the commission, based on its strategic planning process, shall submit recommendations to the Legislature, on or before July 1, 2000, regarding the time commitment required for service on the commission, compensation of the commissioners, and other matters the commission deems appropriate.

SEC. 3. Section 105 of the Fish and Game Code is amended to read:

105. The commission shall form a marine resources committee from its membership consisting of at least one commissioner. The committee shall report to the commission from time to time on its activities and shall make recommendations on all marine resource

matters considered by the commission. The committee or its designee shall, to the extent practicable, attend meetings of the department staff, including meetings of the department staff with interested parties, in which significant marine living resource management documents are being developed.

SEC. 4. Section 221 of the Fish and Game Code is amended to read:

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

SEC. 5. Section 309 of the Fish and Game Code is amended to read:

309. (a) 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 3 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 that 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.

(b) Any deliberation conducted by the commission, or conducted by any person appointed by the commission to conduct hearings, is deemed to be a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code or similar provision, within the meaning of paragraph (3) of subdivision (c) of Section 11126 of the Government Code.

SEC. 6. Section 5521.6 is added to the Fish and Game Code, to read:

5521.6. Notwithstanding Sections 5521 and 5521.5, a registered aquaculturist may collect abalone for broodstock, in accordance with subdivision (b) of Section 15301.

SEC. 7. Part 1.5 (commencing with Section 7000) of Division 6 of the Fish and Game Code is repealed.

SEC. 8. Section 7057 is added to the Fish and Game Code, to read:

7057. Notwithstanding Section 7550.5 of the Government Code, on or before February 1, 2000, the commission shall make recommendations to the Legislature in regard to changes in statutes

governing restricted access commercial fisheries, the recommendations to be based on both of the following:

(a) Any restricted access fishery policies adopted by the commission.

(b) The experience of the commission and department in applying the restricted access policies adopted by the commission in developing or revising a restricted access program for a fishery managed by the state, with priority given to the pink shrimp fishery, for which a restricted access program statute is scheduled to be repealed on April 1, 2001.

SEC. 9. Section 7059 of the Fish and Game Code is amended to read:

7059. (a) The Legislature finds and declares all of the following:

(1) Successful marine life and fishery management is a collaborative process that requires a high degree of ongoing communication and participation of all those involved in the management process, particularly the commission, the department, and those who represent the people and resources that will be most affected by fishery management decisions, especially fishery participants and other interested parties.

(2) In order to maximize the marine science expertise applied to the complex issues of marine life and fishery management, the commission and the department are encouraged to continue to, and to find creative new ways to, contract with or otherwise effectively involve Sea Grant staff, marine scientists, economists, collaborative factfinding process and dispute resolution specialists, and others with the necessary expertise at colleges, universities, private institutions, and other agencies.

(3) The benefits of the collaborative process required by this section apply to most marine life and fishery management activities including, but not limited to, the development and implementation of research plans, marine managed area plans, fishery management plans, and plan amendments, and the preparation of fishery status reports such as those required by Section 7065.

(4) Because California is a large state with a long coast, and because travel is time consuming and costly, the involvement of interested parties shall be facilitated, to the extent practicable, by conducting meetings and discussions in the areas of the coast and in ports where those most affected are concentrated.

(b) In order to fulfill the intent of subdivision (a), the commission and the department shall do all of the following:

(1) Periodically review marine life and fishery management operations with a view to improving communication, collaboration, and dispute resolution, seeking advice from interested parties as part of the review.

(2) Develop a process for the involvement of interested parties and for factfinding and dispute resolution processes appropriate to each element in the marine life and fishery management process.

Models to consider include, but are not limited to, the take reduction teams authorized under the Marine Mammal Protection Act (16 U.S.C. Sec. 1361 et seq.) and the processes that led to improved management in the California herring, sea urchin, prawn, angel shark, and white seabass fisheries.

(3) Consider the appropriateness of various forms of fisheries comanagement, which involves close cooperation between the department and fishery participants, when developing and implementing fishery management plans.

(4) When involving fishery participants in the management process, give particular consideration to the gear used, involvement of sport or commercial sectors or both sectors, and the areas of the coast where the fishery is conducted in order to ensure adequate involvement.

SEC. 10. Section 7065 of the Fish and Game Code is amended to read:

7065. (a) The director shall report annually in writing to the commission on the status of sport and commercial marine fisheries managed by the state. The date of the report shall be chosen by the commission with the advice of the department. Each annual report shall cover at least one-fourth of the marine fisheries managed by the state so that every fishery will be reported on at least once every four years. The department shall, consistent with Section 7059, involve expertise from outside the department in compiling information for the report, which may include, but need not be limited to, Sea Grant staff, other marine scientists, fishery participants, and other interested parties.

(b) For each fishery reported on in an annual report, the report shall include information on landings, fishing effort, areas where the fishery occurs, and other factors affecting the fishery as determined by the department and the commission. Each restricted access program shall be reviewed at least every five years for consistency with the policies of the commission on restricted access fisheries.

(c) Notwithstanding subdivision (a), the first annual report shall be presented to the commission on or before September 1, 2001, and shall cover all the marine fisheries managed by the state. To the extent that the requirements of this section and Section 7073 are duplicative, the first annual report may be combined with the plan required pursuant to Section 7073.

SEC. 11. Section 7066 of the Fish and Game Code is amended to read:

7066. (a) The Legislature finds and declares that a number of human-caused and natural factors can affect the health of marine fishery resources and result in marine fisheries that do not meet the policies and other requirements of this part.

(b) To the extent feasible, the director's report to the commission pursuant to Section 7065 shall identify any marine fishery that does not meet the sustainability policies of this part. In the case of a fishery

identified as being depressed, the report shall indicate the causes of the depressed condition of the fishery, describe steps being taken to rebuild the fishery, and, to the extent practicable, recommend additional steps to rebuild the fishery.

(c) The director's report to the commission pursuant to Section 7065, consistent with subdivision (m) of Section 7056, shall evaluate the management system and may recommend modifications of that system to the commission.

SEC. 11.5. Section 7071 of the Fish and Game Code is amended to read:

7071. (a) Any white seabass fishery management plan adopted by the commission on or before January 1, 1999, shall remain in effect until amended pursuant to this part.

Notwithstanding paragraph (2) of subdivision (b) of Section 7073, any white seabass fishery management plan adopted by the commission and in existence on January 1, 1999, shall be amended to comply with this part on or before January 1, 2002.

(b) In the case of any fishery for which the commission has management authority, including white seabass, regulations that the commission adopts to implement a fishery management plan or plan amendment for that fishery may make inoperative, in regard to that fishery, any fishery management statute that applies to that fishery, including, but not limited to, statutes that govern allowable catch, restricted access programs, and time, area, and methods of taking.

(c) On and after January 1, 2000, the commission may adopt regulations as it determines necessary, based on the advice and recommendations of the department, and in a process consistent with Section 7059, to regulate all emerging fisheries, consistent with Section 7090, all fisheries for nearshore fish stocks, and all fisheries for white seabass. Regulations adopted by the commission may include, but need not be limited to, establishing time and area closures, requiring submittal of landing and permit information, regulating fishing gear, and establishing restricted access fisheries.

SEC. 12. Section 7072 of the Fish and Game Code is amended to read:

7072. (a) Fishery management plans shall form the primary basis for managing California's sport and commercial marine fisheries.

(b) Fishery management plans shall be based on the best scientific information that is available, on other relevant information that the department possesses, or on such scientific information or other relevant information that can be obtained without substantially delaying the preparation of the plan, based on the schedule developed pursuant to paragraph (5) of subdivision (b) of Section 7073.

(c) To the extent that conservation and management measures in a fishery management plan either increase or restrict the overall harvest in a fishery, fishery management plans shall allocate those

increases or restrictions fairly among recreational and commercial sectors participating in the fishery.

(d) Consistent with Article 17 (commencing with Section 8585), the commission shall adopt a fishery management plan for the nearshore fishery on or before January 1, 2002, if funds are appropriated for that purpose in the annual Budget Act or pursuant to any other law.

SEC. 13. Section 7073 of the Fish and Game Code is amended to read:

7073. (a) On or before September 1, 2001, the department shall submit to the commission for its approval a master plan that specifies the process and the resources needed to prepare, adopt, and implement fishery management plans for sport and commercial marine fisheries managed by the state. Consistent with Section 7059, the master plan shall be prepared with the advice, assistance, and involvement of participants in the various fisheries and their representatives, marine conservationists, marine scientists, and other interested persons.

(b) The master plan shall include all of the following:

(1) A list identifying the fisheries managed by the state, with individual fisheries assigned to fishery management plans as determined by the department according to conservation and management needs and consistent with subdivision (f) of Section 7056.

(2) A priority list for preparation of fishery management plans. Highest priority shall be given to fisheries that the department determines have the greatest need for changes in conservation and management measures in order to comply with the policies and requirements set forth in this part. Fisheries for which the department determines that current management complies with the policies and requirements of this part shall be given the lowest priority.

(3) A description of the research, monitoring, and data collection activities that the department conducts for marine fisheries and of any additional activities that might be needed for the department to acquire essential fishery information, with emphasis on the higher priority fisheries identified pursuant to paragraph (2).

(4) A process consistent with Section 7059 that ensures the opportunity for meaningful involvement in the development of fishery management plans and research plans by fishery participants and their representatives, marine scientists, and other interested parties.

(5) A process for periodic review and amendment of the master plan.

(c) The commission shall adopt or reject the master plan or master plan amendment, in whole or in part, after a public hearing. If the commission rejects a part of the master plan or master plan amendment, the commission shall return that part to the department

for revision and resubmission pursuant to the revision and resubmission procedures for fishery management plans as described in subdivision (a) of Section 7075.

SEC. 14. Section 7074 of the Fish and Game Code is amended to read:

7074. (a) The department shall prepare interim fishery research protocols for at least the three highest priority fisheries identified pursuant to paragraph (2) of subdivision (b) of Section 7073. An interim fishery protocol shall be used by the department until a fishery management plan is implemented for that fishery.

(b) Consistent with Section 7059, each protocol shall be prepared with the advice, assistance, and involvement of participants in the various fisheries and their representatives, marine conservationists, marine scientists, and other interested persons.

(c) Interim protocols shall be submitted to peer review as described in Section 7062 unless the department, pursuant to subdivision (d), determines that peer review of the interim protocol is not justified. For the purpose of peer review, interim protocols may be combined in the following circumstances:

(1) For related fisheries.

(2) For two or more interim protocols that the commission determines will require the same peer review expertise.

(d) The commission, with the advice of the department, shall adopt criteria to be applied in determining whether an interim protocol may be exempted from peer review.

SEC. 15. The heading of Chapter 8 (commencing with Section 7080) of Part 1.7 of Division 6 of the Fish and Game Code is amended to read:

CHAPTER 8. EMERGING FISHERIES

SEC. 16. Section 7090 of the Fish and Game Code is amended to read:

7090. (a) The Legislature finds and declares that a proactive approach to management of emerging fisheries will foster a healthy marine environment and will benefit both commercial and sport fisheries and other marine-dependent activities. Therefore, the commission, based upon the advice and recommendations of the department, shall encourage, manage, and regulate emerging fisheries consistent with the policies of this part.

(b) "Emerging fishery," in regard to a marine fishery, means both of the following:

(1) A fishery that the director has determined is an emerging fishery, based on criteria that are approved by the commission and are related to a trend of increased landings or participants in the fishery and the degree of existing regulation of the fishery.

(2) A fishery that is not an established fishery. "Established fishery," in regard to a marine fishery, means, prior to January 1, 1999, one or more of the following:

(A) A restricted access fishery has been established in this code or in regulations adopted by the commission.

(B) A fishery, for which a federal fishery management plan exists, and in which the catch is limited within a designated time period.

(C) A fishery for which a population estimate and catch quota is established annually.

(D) A fishery for which regulations for the fishery are considered at least biennially by the commission.

(E) A fishery for which this code or regulations adopted by the commission prescribes at least two management measures developed for the purpose of sustaining the fishery. Management measures include minimum or maximum size limits, seasons, time, gear, area restriction, and prohibition on sale or possession of fish.

(c) The department shall closely monitor landings and other factors it deems relevant in each emerging fishery and shall notify the commission of the existence of an emerging fishery.

(d) The commission, upon the recommendation of the department, may do either, or both, of the following:

(1) Adopt regulations that limit taking in the fishery by means that may include, but not be limited to, restricting landings, time, area, gear, or access. These regulations may remain in effect until a fishery management plan is adopted or for 12 months, whichever is shorter.

(2) Direct the department to prepare a fishery management plan for the fishery and regulations necessary to implement the plan.

(e) A fishery management plan for an emerging fishery shall comply with the requirements for preparing and adopting fishery management plans contained in this part. In addition to those requirements, to allow for adequate evaluation of the fishery and the acquisition of essential fishery information, the fishery management plan shall provide an evaluation period, which shall not exceed three years unless extended by the commission. During the evaluation period, the plan shall do both of the following:

(1) In order to prevent excess fishing effort during the evaluation period, limit taking in the fishery by means that may include, but need not be limited to, restricting landings, time, area, gear, or access to a level that the department determines is necessary for evaluation of the fishery.

(2) Contain a research plan that includes objectives for evaluating the fishery, a description of the methods and data collection techniques for evaluating the fishery, and a timetable for completing the evaluation.

(f) The commission is authorized to impose a fee on an emerging fishery in order to pay the costs of implementing this chapter. The fees may include, but need not be limited to, ocean fishing stamps and permit fees. The fees may not be levied in excess of the necessary

costs to implement and administer this chapter. The commission may reduce fees annually if it determines that sufficient revenues exist to cover costs incurred by the department in administering this chapter. The commission and the department, with the advice of fishery participants and other interested parties, shall consider alternative ways to fund the evaluation of emerging fisheries.

(g) An emerging fishery is subject to this section unless the department incorporates the fishery into a fishery management plan developed under Sections 7070 to 7088, inclusive.

(h) In the event that this section is found to conflict with Section 8606, 8614, or 8615, this section shall prevail.

SEC. 17. Section 7704 of the Fish and Game Code is amended to read:

7704. (a) It is unlawful to cause or permit any deterioration or waste of any fish taken in the waters of this state, or brought into this state, or to take, receive or agree to receive more fish than can be used without deterioration, waste, or spoilage.

(b) Except as permitted by this code, it is unlawful to use any fish, or part thereof, except fish offal, in a reduction plant or by a reduction process.

(c) Except as permitted by this code or by regulation of the commission, it is unlawful to sell, purchase, deliver for commercial purposes, or possess on any commercial fishing vessel registered pursuant to Section 7881 any shark fin or shark tail or portion thereof that has been removed from the carcass. However, thresher shark tails and fins that have been removed from the carcass and whose original shape remain unaltered may be possessed on a registered commercial fishing vessel if the corresponding carcass is in possession for each tail and fin.

SEC. 18. Section 7710 of the Fish and Game Code is amended to read:

7710. (a) If the director determines, based on the best available scientific information, or other relevant information that the director possesses or receives, and on at least one public hearing in the area of the fishery, that taking in a fishery is being conducted in a manner that is not sustainable, the director may order the closure of any waters or otherwise restrict the taking under a fishing license in state waters of that species. Any closure or restriction order shall be adopted by emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(b) The director shall bring to the attention of the commission within seven working days any regulations adopted pursuant to this section. Any regulations shall be effective for only 30 days unless the commission extends the closure or restriction under any authority it may have, or unless the director orders another closure or restriction, consistent with the requirements of subdivision (a).

(c) The department shall give notice of any hearing to be held pursuant to this section to the commission and its marine resources committee as far in advance of the hearing date as possible.

Nothing in this section or Section 7710.5 restricts any existing jurisdiction of the department with regard to the regulation of fisheries on the high seas.

SEC. 19. Section 7712 of the Fish and Game Code is amended to read:

7712. Where a fishery is closed or restricted due to the need to protect a fishery resource, marine mammals, or sea birds, or due to a conflict with other fisheries or uses of the marine environment, it shall be the policy of the department and the commission, consistent with budgetary and personnel considerations, to assist and foster the development of alternative fisheries or alternative fishing gear for those commercial fishermen affected by the restrictions, closures, or resource losses, including, but not limited to, the issuing of experimental gear permits pursuant to Section 8606 for alternative fishing methods or fishing gear consistent with the policies set forth in this division.

SEC. 20. Section 8100 of the Fish and Game Code is amended to read:

8100. "Limited entry fishery" means a fishery in which the number of persons who may participate or the number of vessels that may be used in taking a specified species of fish is limited by statute or regulation.

SEC. 21. Section 8101 of the Fish and Game Code is amended to read:

8101. (a) Any licensed fisherman shall be eligible for inclusion during the initial year of a limited entry fishery which is established by statute that becomes operative after January 1, 1982, regardless of the prescribed conditions for entry into the fishery, if the fisherman presents to the department satisfactory evidence that he or she has been licensed as a California commercial fisherman for at least 20 years and has participated in the fishery for at least one of those 20 years, with qualifying participation in the fishery to be determined by the commission based on landings or other appropriate criteria.

(b) Fishermen who have established eligibility to participate in a limited entry fishery under this section are subject to conditions of continuing eligibility established by statute or regulation if those fishermen desire to maintain their eligibility.

SEC. 22. Section 8585.5 of the Fish and Game Code is amended to read:

8585.5. The Legislature finds and declares that important commercial and recreational fisheries exist on numerous stocks of rockfish (genus Sebastes), California sheephead (genus Semicossyphus), kelp greenling (genus Hexagrammos), cabezon (genus Scorpaenichthys), and scorpionfish (genus Scorpaena), in the nearshore state waters extending from the shore to one nautical mile

offshore the California coast, that there is increasing pressure being placed on these fish from recreational and commercial fisheries, that many of these fish species found in the nearshore waters are slow growing and long lived, and that, if depleted, many of these species may take decades to rebuild. The Legislature further finds and declares that, although extensive research has been conducted on some of these species by state and federal governments, there are many gaps in the information on these species and their habitats and that there is no program currently adequate for the systematic research, conservation, and management of nearshore fish stocks and the sustainable activity of recreational and commercial nearshore fisheries. The Legislature further finds and declares that recreational fishing in California generates funds pursuant to the Federal Aid in Sport Fish Restoration Act (16 U.S.C. Secs. 777 to 777*l*, inclusive), with revenues used for, among other things, research, conservation, and management of nearshore fish. The Legislature further finds and declares that a program for research and conservation of nearshore fish species and their habitats is needed, and that a management program for the nearshore fisheries is necessary. The Legislature further finds and declares that the commission should be granted additional authority to regulate the commercial and recreational fisheries to assure the sustainable populations of nearshore fish stocks. Lastly, the Legislature finds and declares that, whenever feasible and practicable, it is the policy of the state to assure sustainable commercial and recreational nearshore fisheries, to protect recreational opportunities, and to assure long-term employment in commercial and recreational fisheries.

SEC. 22.3. Section 8586 of the Fish and Game Code is amended to read:

8586. The following definitions govern the construction of this article:

(a) "Nearshore fish stocks" means any of the following: rockfish (genus Sebastes) for which size limits are established under this article, California sheephead (Semicossyphus pulcher), greenlings of the genus Hexagrammos, cabezon (Scorpaenichthys marmoratus), scorpionfish (Scorpaena guttata), and may include other species of finfish found primarily in rocky reef or kelp habitat in nearshore waters.

(b) "Nearshore fisheries" means the commercial or recreational take or landing of any species of nearshore finfish stocks.

(c) "Nearshore waters" means the ocean waters of the state extending from the shore to one nautical mile from land, including one nautical mile around offshore rocks and islands.

SEC. 22.5. Section 8587 of the Fish and Game Code is amended to read:

8587. Any person taking, possessing aboard a boat, or landing any species of nearshore fish stock for commercial purposes shall possess a valid nearshore fishery permit issued to that person that has not

been suspended or revoked, except that when using a boat to take nearshore fish stocks at least one person aboard the boat shall have a valid nearshore fishery permit. Nearshore fishing permits are revocable. The fee for a nearshore fishing permit is one hundred and twenty five dollars ($125).

SEC. 23. Section 8587.1 of the Fish and Game Code is repealed.

SEC. 23.3. Section 8587.1 is added to the Fish and Game Code, to read:

8587.1. (a) The commission may adopt regulations as it determines necessary, based on the advice and recommendations of the department, to regulate nearshore fish stocks and fisheries. Regulations adopted by the commission pursuant to this section may include, but are not limited to, requiring submittal of landing and permit information, including logbooks; establishing a restricted access program; and establishing limitations on the fishery based on time, area, type, and amount of gear, and amount of catch, species, and size of fish.

(b) Regulations adopted by the commission pursuant to this section may make inoperative any fishery management statute relevant to the nearshore fishery. Any regulation adopted by the commission pursuant to this subdivision shall specify the particular statute to be made inoperative.

(c) The circumstances, restrictions, and requirements of Section 219 do not apply to regulations adopted pursuant to this section.

(d) Any regulations adopted pursuant to this section shall be adopted following consultation with fishery participants and other interested persons consistent with Section 7059.

SEC. 23.5. Section 8587.2 of the Fish and Game Code is repealed.

SEC. 23.7. Section 8598 of the Fish and Game Code is amended to read:

8598. (a) Notwithstanding Section 8140 or subdivision (b) of Section 8597, specimens of the following groups or species shall not be taken, possessed aboard a boat, or landed for commercial purposes:

(1) Invertebrates:

(A) Phylum Porifera—all sponges.

(B) Genus Pelagia sp.—jellyfish.

(C) Coelenterata—corals, anemones; all species.

(D) Order Gorgonacea—all gorgonians.

(E) Order Pennatulacea—all species, except Renilla kollikeri.

(F) Feather-duster worm—Eudistylia polymorpha.

(G) Fiddler crab—Uca crenulata.

(H) Umbrella crab—Cryptolithodes sitchensis.

(I) Stalked or goose barnacles—Pollicipes sp.

(J) Giant acorn barnacle—Balanus nubilus or B. aguila.

(K) Owl limpet—Lottia gigantea.

(L) Coffee bean shells—Trivia sp.

(M) Three-winged murex—Pteropurpura trialata.

(N) Vidler's simnia—Simnia vidleri.
(O) Queen tegula—Tegula regina.
(P) Opisthobranchia (including nudibranchs)—all subclass Opisthobranchia species except:
(i) Sea hares—Aplysia californica and Aplysia vaccaria.
(ii) Hermissenda crassicornis.
(iii) Lion's mouth—Melibe leonina.
(iv) Aeolidia papillosa.
(v) Spanish shawl—Flabellina iodinea.
(2) Vertebrates:
(A) All shark and ray eggcases.
(B) Brown smoothhound sharks—Mustelus hinlei—that are less than 18 inches in a whole condition or dressed with head and tail removed.
(C) Family Agonidae—all poachers.
(D) Wolf-eel—Anarrhichthys ocellatus.
(E) Juvenile sheephead—Semicossyphus pulcher (under 6 inches).
(F) Garibaldi—Hypsypops rubicundus.
(3) Live rocks.
(A) Rocks with living organisms attached, commonly called "live rocks," shall not be taken or possessed except as provided in subparagraph (C).
(B) Rocks shall not be broken to take marine aquaria species, and any rock displaced to access any of those species shall be returned to its original position.
(C) Rocks cultured under the authority of an aquaculture registration may be possessed.
(b) No organisms may be taken, possessed, or landed for marine aquaria pet trade purposes under the terms of a marine aquaria collector's permit in any of the following areas:
(1) On the north side of Santa Catalina Island from a line extending three nautical miles 90 degrees true from Church Rock to a line extending three nautical miles 270 degrees true from the extreme west end of the island.
(2) On the south or "back" side of Santa Catalina Island from a line extending three nautical miles 90 degrees true from Church Rock to a line extending three nautical miles 270 degrees true from the extreme west end of the island.
(3) Marine life refuges, marine reserves, ecological reserves, and state reserves.

SEC. 24. The heading of Article 20 (commencing with Section 8599) of Chapter 2 of Part 3 of Division 6 of the Fish and Game Code is amended to read:

Article 20. White Sharks and Basking Sharks

SEC. 25. Section 8599.4 is added to the Fish and Game Code, to read:

8599.4. The commission may adopt regulations to manage basking sharks. A basking shark may not be taken commercially unless the commission adopts regulations for that activity and the taking is in accordance with those regulations.

SEC. 26. Section 8681.5 of the Fish and Game Code is amended to read:

8681.5. (a) The department shall issue no new gill net or trammel net permits under Section 8681. However, the department may renew an existing, valid permit issued under Section 8681, under regulations adopted pursuant to Section 8682 and upon payment of the fee prescribed under Section 8683.

(b) Notwithstanding subdivision (a) or Section 8681, any person who has an existing, valid permit issued pursuant to Section 8681, and presents to the department satisfactory evidence that he or she has taken and landed fish for commercial purposes in at least 15 of the preceding 20 years, may transfer that permit to any person otherwise qualified under the regulations adopted pursuant to Section 8682 upon payment of the fee prescribed under Section 8683.

(c) The fee collected by the department for the transfer of a gill and trammel net permit issued pursuant to Section 8682 shall not exceed the cost of the permit fee as prescribed under Section 8683.

(d) For purposes of subdivision (b), the death of the holder of the permit is a disability which authorizes transfer of the permit by that person's estate to a qualified fisherman pursuant to Section 8682. For purposes of a transfer under this subdivision, the estate shall renew the permit, as specified in Section 8681, if the permittee did not renew the permit before his or her death. The application for transfer by that person's estate shall be received by the department, including the name, address, and telephone number of the qualified fisherman to whom the permit will be transferred, within one year of the date of death of the permitholder. If no transfer is initiated within one year of the date of death of the permitholder, the permit shall revert to the department for disposition pursuant to Section 8681.

(e) Any active participant who becomes disabled in such a manner that he or she can no longer earn a livelihood from commercial fishing may transfer his or her permit as provided under this section.

(f) The Legislature finds and declares that this section, as amended by Chapter 94 of the Statutes of 1992, is more restrictive on the use and possession of gill nets and trammel nets than the version of this section in effect on January 1, 1989, and therefore complies with Section 8610.4, and Section 4 of Article X B of the California Constitution.

SEC. 27. Section 8693.5 of the Fish and Game Code is repealed.

SEC. 28. Section 8695.5 of the Fish and Game Code is repealed.

SEC. 29. Section 8780.1 is added to the Fish and Game Code, to read:

8780.1. The commission may, upon the recommendation of the department, adopt regulations governing the use of bait nets.

SEC. 30. Section 8837 of the Fish and Game Code is amended to read:

8837. It is unlawful to use or possess any trawl net that includes any bag or cod-end or modification thereof, other than a bag or cod-end of a single layer of webbing, except as authorized by Section 8496 or by the commission.

SEC. 31. 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.

CHAPTER 484

An act to amend Sections 6471, 6472, and 6477 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 6471 of the Revenue and Taxation Code, as added by Chapter 106 of the Statutes of 1985, is amended to read:

6471. (a) Upon written notification by the board, any person whose estimated measure of tax liability under this part averages seventeen thousand dollars ($17,000) or more per month, as determined by the board, shall, without regard to the measure of tax in any one month make prepayments as prescribed in this section.

(1) In the first, third, and fourth calendar quarters, the person shall prepay not less than 90 percent of the amount of state and local tax liability for each of the first two monthly periods of each quarterly period.

(2) In the second calendar quarter, the person shall prepay a first prepayment of 90 percent of the amount of state and local tax liability for the first monthly period of each quarterly period and a second prepayment of either of the following:

(A) Ninety percent of the amount of state and local tax liability for the second monthly period of the quarterly period, plus 90 percent

of the amount of state and local tax liability for the first 15 days of the third monthly period of the quarterly period.

(B) Ninety percent of the amount of state and local tax liability for the second monthly period of the quarterly period, plus 50 percent of 90 percent of the amount of the liability for the second monthly period of the quarterly period.

(b) Persons engaged in their present business during all of the corresponding quarterly period of the preceding year, or persons who are successors to a business that was in operation during all of that quarterly period, may satisfy the above monthly prepayment requirements for the first, third, and fourth calendar quarters by payment of an amount equal to one-third of the measure of tax liability reported on the return or returns filed for that quarterly period of the preceding year multiplied by the state and local tax rate in effect during the month for which the prepayment is made.

The persons may satisfy their prepayment requirements for the second calendar quarter by making a first prepayment of an amount equal to one-third of the measure of tax liability reported, and a second prepayment of an amount equal to one-half of the measure of tax liability reported, on the return or returns filed for that quarterly period of the preceding year multiplied by the state and local tax rate in effect during the month for which the prepayment is made.

Prepayments shall be made during the quarterly periods designated by the board and during each succeeding quarterly period until further notified in writing by the board.

SEC. 2. Section 6472 of the Revenue and Taxation Code is amended to read:

6472. Except in the case of persons required to remit amounts due in accordance with Article 1.2 (commencing with Section 6479.3), for purposes of Section 6471, prepayment shall be accompanied by a report of the amount of the prepayment in a form prescribed by the board and shall be made to the board as follows:

(a) In the first, third, and fourth calendar quarters, on or before the 24th day next following the end of each of the first two monthly periods of each quarterly period.

(b) In the second calendar quarter as follows:

(1) The first prepayment on or before the 24th day next following the end of the first monthly period of each quarterly period.

(2) The second prepayment on or before the 24th day of the third monthly period of each quarterly period for the second monthly period and the first 15 days of the third monthly period of each quarterly period.

SEC. 3. Section 6477 of the Revenue and Taxation Code, as amended by Section 5 of Chapter 337 of the Statutes of 1983, is amended to read:

6477. Any person required to make a prepayment pursuant to Section 6471 or Section 6471.5 who fails to make a prepayment before

the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for the quarterly period in which the prepayment became due shall pay a penalty of 6 percent of the amount equal to 90 percent of the tax liability, as prescribed in those sections, for each of the periods during that quarterly period for which a required prepayment was not made.

CHAPTER 485

An act relating to taxation.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. The Legislature finds and declares that on or about February 23, 1995, the Controller's office accepted an assignment of a note secured by a deed of trust on 160 acres of real property located in Malibu, California, as security for estate taxes and interest on the estate of Frank Capra. The property had been purchased from the Capra estate by the Mountains Recreation and Conservation Authority. The Mountains Recreation and Conservation Authority defaulted on its payments to the Controller on March 26, 1996.

On behalf of the Controller's office, the Department of General Services is hereby directed to accept a deed in lieu of foreclosure for the 160 acres of real property described as follows:

Parcel 1. The northwest quarter of the southwest quarter of Section 14, Township 1 South, Range 19 West, San Bernardino meridian, in the County of Los Angeles, State of California, according to the official plat thereof.

Parcel 2. The east half of the southeast quarter of Section 15, Township 1 South, Range 19 West, San Bernardino meridian, in the County of Los Angeles, State of California, according to the official plat thereof.

Parcel 3. The southeast quarter of the northeast quarter of Section 15, Township 1 South, Range 19 West, San Bernardino meridian, in the County of Los Angeles, State of California, according to the official plat thereof.

The Controller shall determine whether acceptance of the deed will fully satisfy the estate taxes and interest due on the Capra estate. If the Controller makes this determination, then the Department of General Services shall accept the deed on behalf of the Controller in full satisfaction of the estate taxes and interest due on the Capra estate. If the Controller determines that acceptance of the deed will not fully satisfy the amount of taxes and interest owed on the Capra

estate, then the Legislature finds and declares that acceptance of the deed serves a public purpose because it will allow the completion of the Backbone Trail of the Santa Monica Mountains, and the Department of General Services may accept the deed on behalf of the Controller in lieu of any estate taxes and interest due on the Capra estate. The property shall be transferred to the Department of Parks and Recreation. The Department of General Services shall pay the administrative and staff costs it incurs as a result of the acquisition and transfer of the estate. All other costs associated with the acquisition of the estate shall be paid by the Department of Parks and Recreation.

Notwithstanding any other provision of law, the Department of Parks and Recreation may do either of the following:

(a) Exchange the real property for property of equal or greater fair market value and recreational utility.

(b) In the event that an exchange is not accomplished within one year of the effective date of this act, the department may sell the real property and deposit the proceeds from the sale, less any actual costs associated with the sale, in the State Parks and Recreation Fund for appropriation by the Legislature.

The department shall not convey any land or lands pursuant to this section unless the conveyance includes appropriate deed restrictions that require that the land or lands be retained for public recreation or resource protection purposes, or both, and provide for the completion of the Backbone Trail in the Santa Monica Mountains.

CHAPTER 486

An act to amend Section 17345.1 of the Financial Code, relating to escrow agents.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 17345.1 of the Financial Code is amended to read:

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

(b) (1) Except as provided in subdivision (c), the hearing shall be conducted by an administrative law judge on the staff of the Office of Administrative Hearings and the administrative law judge's proposed decision shall be made within 120 days from the date of the request for hearing. This time limit does not constitute a jurisdictional

deadline and may be extended by stipulation of the parties or by order of the administrative law judge for good cause.

(2) The hearing shall be conducted in accordance with the administrative adjudication provisions of Chapters 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as specified in this subdivision.

(3) The following sections of the Government Code shall not apply to a hearing under this subdivision: Section 11503 (relating to accusations), Section 11504 (relating to statements of issues), Section 11505 (relating to contents of the statement to respondent), Section 11506 (relating to the notice of defense), Section 11507 (relating to amended or supplemental accusations), and Section 11516 (relating to amendment of accusations after submission of case).

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

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

(A) Within 10 days of service of the notice of hearing, the complainant shall file with the Office of Administrative Hearings, and serve upon the respondent by personal service or mail, a written statement setting forth the matters to be considered at the hearing in sufficient detail to permit the respondent to prepare and present its response. The statement shall contain the following:

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

(ii) A statement of the issues to be considered at the hearing including relevant statutes and rules. If the statement includes issues not raised in the proof of loss claim or considered by respondent in its decision, respondent may move for abatement of the proceedings for consideration of those issues by respondent. The administrative law judge may abate the proceedings for a period not to exceed 60 days from the issuance of the order to abate. The administrative law judge may extend the time period for good cause upon motion by respondent or by stipulation of the parties. If respondent has not issued a revised decision within the period of abatement, the administrative law judge shall reset the matter for hearing.

(B) Within 20 days of service of the statement, respondent may file with the Office of Administrative Hearings, and serve upon the

complainant by personal service or mail a written response to the statement.

(C) The statement of issues and response may be amended upon completion of discovery, except that notice of the amendment shall be no later than 30 days before the date set for hearing.

(6) Where the statement of issues includes a claim for a loss of trust obligations that has been denied by respondent, complainant shall bear the burden of establishing by a preponderance of the evidence that a loss as defined in Section 17304 has occurred and that respondent is required to pay the claim in accordance with this chapter.

(7) Any party may move for a judgement on the pleadings or summary judgment, as a dispositive motion, pursuant to the Rules of Procedure of the Office of Administrative Hearings. The evidence in support of and standards for deciding the motions shall be as set forth in the Code of Civil Procedure. If the administrative law judge denies the motion, the matter shall be heard on the merits by the administrative law judge. If the administrative law judge grants the motion, the order shall be in the form of a proposed decision to the commissioner pursuant to subdivision (b) of Section 11517 of the Government Code.

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

(9) If the statement of issues is abated and respondent issues a revised decision, the parties may amend their pleadings within a reasonable period of time, as ordered by the administrative law judge.

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

(2) If the commissioner denies the request for abstention of jurisdiction, the hearing shall be conducted in accordance with subdivision (b), except that compliance by the commissioner with

paragraph (5) of subdivision (b) shall be within five days of the ruling denying the abstention request.

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

(A) The claim for a loss is based upon an alleged escrow transaction in which an officer, director, trustee, stockholder, manager, or employee of the member was a principal to the transaction.

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

(4) The commissioner shall abstain if determination of the claim will cause some escrows to have preferable or favorable treatment over the other escrows held by the member or successor in interest.

CHAPTER 487

An act relating to revenue bonds.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

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

(a) The California Transit Finance Corporation and the WateReuse Association of California, based on statewide surveys, determined that there were capital project needs of their members that could reasonably be expected to require borrowing to finance.

(b) Bond counsel and disclosure counsel, after a detailed review, concluded that the creation of bond pools by several transit agencies and several water agencies was authorized pursuant to Article 2 (commencing with Section 6540) of Chapter 5 of Division 7 of Title 1 of the Government Code.

(c) Based on these needs and the legal review, the California Transit Finance Authority and the WateReuse Association of California were established, in good faith, as joint powers agencies by several transit agencies and several water agencies, respectively, and each joint powers agency issued revenue bonds.

(d) Subsequently, the California Attorney General, in Attorney General Opinion No. 98-807, without specific reference to the transit authority and water use authority bonds, concluded that certain procedures followed in connection with the authorization to issue the revenue bonds do not comply with the provisions of Article 2 (commencing with Section 6540) of Chapter 5 of Division 7 of Title 1 of the Government Code.

(e) In enacting this act, the Legislature intends to confirm the validation of the issuance of those bonds and thereby remove any cloud upon their validity or the use of proceeds of the bonds to finance members' projects.

SEC. 2. The issuance of joint powers authority revenue bonds by the California Transit Finance Authority and the WateReuse Finance Authority of California each in the amount of two hundred million dollars ($200,000,000) and dated December 15, 1997, and June 27, 1998, respectively, to finance transportation facilities for members of the California Transit Association and to finance water, wastewater, and water recycling, storage, and distribution facilities for members of the WateReuse Association of California and the use of the proceeds of those revenue bonds to finance those projects through lease or installment sale of the projects or the purchase of bonds or loans of those members, all acts and proceedings taken by or on behalf of those joint powers authorities in connection with the authorization, issuance, sale, execution, delivery, or exchange of those bonds, are hereby authorized, confirmed, validated, and declared legally effective under the laws of the State of California without limitation. All persons or governmental entities are barred from challenging the issuance of those bonds or the use of bond proceeds based on the manner in which the pools were formed.

It is the intent of the Legislature not to validate any other bonds of this type and that this act shall not be construed as having any effect on Attorney General Opinion No. 98-807.

CHAPTER 488

An act to add Section 13178 to the Water Code, relating to water.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 13178 is added to the Water Code, to read:

13178. (a) (1) On or before September 30, 2000, the state board, in conjunction with the State Department of Health Services and a panel of experts established by the state board, shall develop source investigation protocols for use in conducting source investigations of storm drains that produce exceedences of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code. The protocols shall be based upon the experiences drawn from previous source investigations performed by the state board, regional boards, or other agencies, and other available data. The protocols shall include methods for identifying the location and biological origins of sources of bacteriological

contamination, and, at a minimum, shall require source investigations if bacteriological standards are exceeded in any three weeks of a four-week period, or, for areas where testing is done more than once a week, 75 percent of testing days that produce an exceedence of those standards.

(2) The development of source investigation protocols pursuant to paragraph (1) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before March 31, 2001, the state board, in conjunction with the State Department of Health Services, shall report to the Legislature on the methods by which it intends to conduct source investigations of storm drains that produce exceedences of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code. Factors to be addressed in the report shall include the approximate number of public beaches expected to be affected by the exceedence of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code, as well as the costs expected for source investigation of the storm drains affecting those public beaches. The report shall include a timeline for completion of source investigations.

CHAPTER 489

An act to amend Sections 1808, 1810, 12800.5, and 13005.5 of the Vehicle Code, relating to the Department of Motor Vehicles.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 1808 of the Vehicle Code is amended to read:

1808. (a) Except where a specific provision of law prohibits the disclosure of records or information or provides for confidentiality, all records of the department relating to the registration of vehicles, other information contained on an application for a driver's license, abstracts of convictions, and abstracts of accident reports required to be sent to the department in Sacramento, except for abstracts of accidents where, in the opinion of a reporting officer, another individual was at fault, shall be open to public inspection during office hours. All abstracts of accident reports shall be available to law enforcement agencies and courts of competent jurisdiction.

(b) The department shall make available or disclose abstracts of convictions and abstracts of accident reports required to be sent to the department in Sacramento, as described in subdivision (a), if the date of the occurrence is not later than the following:

(1) Seven years for any violation designated as two points pursuant to Section 12810.

(2) Three years for accidents and all other violations.

(c) The department shall make available or disclose suspensions and revocations of the driving privilege while the suspension or revocation is in effect and for three years following termination of the action or reinstatement of the privilege, except that drivers license suspension actions taken pursuant to Sections 13202.6 and 13202.7, or Section 256 or 11350.6 of the Welfare and Institutions Code shall be disclosed only during the actual time period in which the suspension is in effect.

(d) The department shall not make available or disclose any suspension or revocation that has been judicially set aside or stayed.

(e) The department shall not make available or disclose personal information about any person unless the disclosure is in compliance with the Driver's Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.). However, any disclosure is subject to the prohibition in paragraph (2) of subdivision (a) of Section 12800.5.

SEC. 2. Section 1810 of the Vehicle Code is amended to read:

1810. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.7, 1808.8, and paragraph (2) of subdivision (a) of Section 12800.5, the department may permit inspection of, or sell, or both, information from its records concerning the registration of any vehicle or information from the files of drivers' licenses at a charge sufficient to pay the actual cost to the department for providing the inspection or sale of the information, including, but not limited to, costs incurred by the department in carrying out subdivision (b), with the charge for the information to be determined by the director. This section does not apply to statistical information of the type previously compiled and distributed by the department.

(b) (1) With respect to the inspection or sale of information concerning the registration of any vehicle or of information from the files of drivers' licenses, the department shall, by regulation, establish administrative procedures under which any person making a request for that information shall be required to identify himself or herself and state the reason for making the request. The procedures shall provide for the verification of the name and address of the person making a request for the information, and the department may require the person to produce that information as it determines is necessary to ensure that the name and address of the person is the true name and address. The procedures may provide for a 10-day delay in the release of the requested information. The procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided

and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.

(2) The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.

(c) With respect to the inspection or sale of information from the files of drivers' licenses, the department may require both the full name of the driver and either the driver's license number or date of birth as identifying points of the record, except that the department may disclose a record without two identifying points if the department determines that the public interest in disclosure outweighs the public interest in personal privacy.

(d) With respect to the inspection or sale of information from the files of drivers' licenses, certificates of ownership, and registration cards, the department shall not, for a fee or otherwise, allow copying by the public.

SEC. 3. Section 12800.5 of the Vehicle Code is amended to read:

12800.5. (a) (1) A license shall bear a fullface engraved picture or photograph of the licensee.

(2) Notwithstanding any other provision of law, the department shall not, unless requested by the licensee, distribute or sell the licensee's picture or photograph or any information pertaining to the licensee's physical characteristics to any private individual, other than the licensee, or to any firm, copartnership, association, or corporation. This paragraph does not apply to any private business entity that contracts with the department for the production of driver's licenses and identification cards, if the contract prohibits the unauthorized use and disclosure of the information.

(b) A license, including a temporary license issued pursuant to Section 12506, shall bear the following notice: "This license is issued as a license to drive a motor vehicle; it does not establish eligibility for employment, voter registration, or public benefits."

(c) The department may demand proof of age prior to the issuance of a license.

SEC. 4. Section 13005.5 of the Vehicle Code is amended to read:

13005.5. (a) An identification card issued to any person shall bear a fullface engraved picture or photograph of the person.

(b) Notwithstanding any other provision of law, the department shall not, unless requested by the applicant, distribute or sell the applicant's picture or photograph or any information pertaining to the applicant's physical characteristics to any private individual, other than the applicant, or to any firm, copartnership, association, or corporation. This subdivision does not apply to any private business entity that contracts with the department for the production

of driver's licenses and identification cards, if the contract prohibits the unauthorized use and disclosure of the information.

CHAPTER 490

An act to amend Sections 17001, 17050, and 17101 of the Corporations Code, relating to limited liability companies.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 17001 of the Corporations Code is amended to read:

17001. Unless the context otherwise indicates, the following definitions govern the construction of this title:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) "Articles of organization" means articles of organization filed under Section 17050, including all amendments thereto or restatements thereof, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized.

(c) "Bankrupt" or "bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

(d) "Capital account" means, unless otherwise provided in the operating agreement, the amount of the capital interest of a member in the limited liability company consisting of that member's original contribution, as (1) increased by any additional contributions and by that member's share of the limited liability company's profits, and (2) decreased by any distribution to that member and by that member's share of the limited liability company's losses.

(e) "Constituent limited liability company" means a limited liability company that is merged with or into one or more other

limited liability companies or other business entities and includes a surviving limited liability company.

(f) "Constituent other business entity" means any other business entity that is merged with or into one or more limited liability companies and includes a surviving other business entity.

(g) "Contribution" means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this title, which a member contributes to a limited liability company as capital in that member's capacity as a member pursuant to an agreement between the members, including an agreement as to value.

(h) "Disappearing limited liability company" means a constituent limited liability company that is not the surviving limited liability company.

(i) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(j) "Distribution" means the transfer of money or property by a limited liability company to its members without consideration.

(k) "Domestic" means organized under the laws of this state when used in relation to any limited liability company, other business entity or person (other than a natural person).

(*l*) "Domestic corporation" means a corporation as defined in Section 162.

(m) "Domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(n) "Economic interest" means a person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the limited liability company, but does not include any other rights of a member, including, without limitation, the right to vote or to participate in management, or, except as provided in Section 17106, any right to information concerning the business and affairs of the limited liability company.

(o) [RESERVED]

(p) "Foreign corporation" means a corporation formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(q) "Foreign limited liability company" means either (1) an entity formed under the limited liability company laws of any state other than this state, or (2) an entity organized under the laws of any foreign country that is (A) an unincorporated association, (B) organized under a statute pursuant to which an association may be formed that affords each of its members limited liability with respect to the liabilities of the entity, and (C) not an entity that is required to be registered or qualified pursuant to the provisions of Title 1 (commencing with Section 100) or Title 2 (commencing with

Section 15001); but the term "foreign limited liability company" does not include a foreign association, as defined in Section 170.

(r) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners or their equivalents under any name.

(s) "Foreign other business entity" means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(t) "Limited liability company" or "domestic limited liability company" means an entity having one or more members that is organized under this title and is subject to the provisions of Section 17101.

(u) "Mail" unless otherwise provided in the operating agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(v) "Majority in interest of the members," unless otherwise provided in the operating agreement, means more than 50 percent of the interests of members in current profits of the limited liability company.

(w) "Manager" means a person elected by the members of a limited liability company to manage the limited liability company if the articles of organization contain the statement referred to in subdivision (b) of Section 17151 or, if the articles of organization do not contain that statement, "manager" means each of the members of the limited liability company.

(x) "Member" means a person who:

(1) Has been admitted to a limited liability company as a member in accordance with the articles of organization or operating agreement, or an assignee of an interest in a limited liability company who has become a member pursuant to Section 17303.

(2) Has not resigned, withdrawn, or been expelled as a member or, if other than an individual, been dissolved.

(y) "Member of record" means a member named as a member on the list maintained in accordance with paragraph (1) of subdivision (a) of Section 17058.

(z) "Membership interest" means a member's rights in the limited liability company, collectively, including the member's economic interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(aa) "Officer" means any person elected or appointed pursuant to Section 17154.

(ab) "Operating agreement" means any agreement, written or oral, between all of the members as to the affairs of a limited liability company and the conduct of its business in any manner not inconsistent with law or the articles of organization, including all

amendments thereto, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized. The term "operating agreement" may include, without more, an agreement between all the members to organize a limited liability company pursuant to the provisions of this title.

(ac) "Other business entity" means a corporation, limited partnership, general partnership, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a domestic limited liability company and a foreign limited liability company.

(ad) "Parent," when used in relation to a specified limited liability company, means a person who owns, directly or indirectly, membership interests possessing more than 50 percent of the voting power of the specified limited liability company. When used in relation to a specified corporation or limited partnership, the term "parent" shall have the meanings set forth in Section 1200 and subdivision (v) of Section 15611, respectively.

(ae) "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

(af) [RESERVED]

(ag) [RESERVED]

(ah) [RESERVED]

(ai) "Proxy," unless otherwise provided in the operating agreement, means a written authorization signed or an electronic transmission authorized by a member or the member's attorney-in-fact giving another person the power to exercise the voting rights of that member. "Signed," for the purpose of this section, means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission, or otherwise) by the member or member's attorney-in-fact.

A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the member, or by the member's attorney-in-fact.

(aj) "Return of capital," unless otherwise provided in the operating agreement, means any distribution to a member to the extent that the member's capital account, immediately after the distribution, is less than the amount of that member's contributions to the limited liability company as reduced by prior distributions that were a return of capital.

(ak) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(a*l*) "Subsidiary of a specified limited liability company" means a limited liability company or other business entity in which shares,

interests, or other securities possessing more than 50 percent of the voting power are owned by the specified limited liability company.

(am) "Surviving limited liability company" means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(an) "Surviving other business entity" means an other business entity into which one or more limited liability companies are merged.

(ao) "Time a notice is given or sent," unless otherwise expressly provided, means the time a written notice is deposited in the United States mail ; is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(ap) "Transact intrastate business" means to enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.

(1) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business, or merely because of its status as any one or more of the following:

(A) A shareholder of a domestic corporation.

(B) A shareholder of a foreign corporation transacting intrastate business.

(C) A limited partner of a foreign limited partnership transacting intrastate business.

(D) A limited partner of a domestic limited partnership.

(E) A member or manager of a foreign limited liability company transacting intrastate business.

(F) A member or manager of a domestic limited liability company.

(2) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes.

(B) Holding meetings of its managers or members or carrying on any other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's securities

or maintaining trustees or depositaries with respect to those securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(G) Creating or acquiring evidences of debt or mortgages, liens, or security interests in real or personal property.

(H) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(I) Conducting an isolated transaction that is completed within 180 days and not in the course of a number of repeated transactions of a like nature.

(3) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a member or manager of a domestic limited liability company or a foreign limited liability company registered to transact intrastate business in this state.

(aq) "Vote" includes authorization by written consent.

(ar) "Voting power" means the power to vote on any matter at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event which has not yet occurred.

(as) "Withdrawal" includes the resignation or retirement of a member as a member.

(at) "Written" or "in writing" includes facsimile and telegraphic communication.

SEC. 2. Section 17050 of the Corporations Code is amended to read:

17050. (a) In order to form a limited liability company, one or more persons shall execute and file articles of organization with, and on a form prescribed by, the Secretary of State and, either before or after the filing of articles of organization, the members shall have entered into an operating agreement. The person or persons who execute and file the articles of organization may, but need not, be members of the limited liability company.

(b) A limited liability company shall have one or more members.

(c) The existence of a limited liability company begins upon the filing of the articles of organization. For all purposes, a copy of the articles of organization duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

SEC. 3. Section 17101 of the Corporations Code is amended to read:

17101. (a) Except as otherwise provided in Section 17254 or in subdivision (e), no member of a limited liability company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability

company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a member of the limited liability company.

(b) A member of a limited liability company shall be subject to liability under the common law governing alter ego liability, and shall also be personally liable under a judgment of a court or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation; except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that a member or the members have alter ego or personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers.

(c) Nothing in this section shall be construed to affect the liability of a member of a limited liability company (1) to third parties for the member's participation in tortious conduct, or (2) pursuant to the terms of a written guarantee or other contractual obligation entered into by the member, other than an operating agreement.

(d) A limited liability company or foreign limited liability company shall carry insurance or provide an undertaking to the same extent and in the same amount as is required by any law, rule, or regulation of this state that would be applicable to the limited liability company or foreign limited liability company were it a corporation organized and existing or duly qualified for the transaction of intrastate business under the General Corporation Law.

(e) Notwithstanding subdivision (a), a member of a limited liability company may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company as long as the agreement to be so obligated is set forth in the articles of organization or in a written operating agreement that specifically references this subdivision.

CHAPTER 491

An act to add Sections 30610.9 and 30610.10 to the Public Resources Code, relating to coastal resources.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The motion picture and television industry is a vital segment of California's economy, and annually contributes more than twenty-seven billion five hundred million dollars ($27,500,000,000) to the state's economy, including employing, directly and indirectly, more than 500,000 people in the state.

(b) Because many motion picture and television productions are filmed on location, and require the temporary placement of sets, and other support facilities and equipment in outdoor locations, it is beneficial to the state that permits for film and television location sets should be evaluated by the state without undue delays.

(c) To expedite the lawful construction of temporary, nonrecurring location sets for motion picture, television, and commercial production, the permitting process for a coastal development permit for motion picture, television, and commercial production projects in the coastal zone, as defined in Section 30103 of the Public Resources Code, should also be expedited.

SEC. 2. Section 30610.9 is added to the Public Resources Code, to read:

30610.9. (a) This section applies only if the governing body of a local government elects to designate the commission as the processing and permitting authority for purposes of this section.

(b) In order to expedite the processing of an application for a coastal development permit for a motion picture, television, or commercial production project in the coastal zone, the governing body of a local government with a certified local coastal program may elect to designate the commission as the appropriate authority to process and issue a coastal development permit for a temporary, nonrecurring location set, if the production activity, including preparation, construction, filming, and set removal at the site will not exceed 190 days, in accordance with the following procedures:

(1) The applicant shall submit a copy of the commission's coastal development permit application, or the local coastal development permit application, to the local government. The governing body of the local government may elect to designate the commission as the processing and permitting authority on a project-by-project basis. The governing body may designate the local coastal administrator or other designee as the decisionmaking authority to decide the projects that will be transmitted to the commission for processing and permitting.

(2) If the governing body of the local government elects to designate the commission as the processing and permitting authority for a project, all documents and changes submitted to the commission during the course of the application process shall also be submitted to the local government for informational purposes. The local

government may transmit any recommendations it may have for the project to the commission.

(3) If the commission issues an administrative permit for a project, rather than a coastal development permit, the local coastal administrator, other designee, or governing body, as the case may be, may object to the commission regarding the issuance of that permit.

(4) The applicant shall obtain all local noncoastal use permits in connection with the project. The approval of the commission's coastal development permit shall be conditioned on the approval of the local noncoastal permits.

(5) The applicant shall transmit all complaints and comments from residents and business owners in connection with the filming activity to the commission for consideration prior to the approval of the application.

(6) The applicant shall obtain all other applicable permits required by state and federal jurisdictions in connection with the project.

CHAPTER 492

An act to amend Sections 8277.5 and 8277.6 of the Education Code, relating to child care and development services.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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, as determined by the department, 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.

(E) To expand upon or preserve existing child care operations.

(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, as determined by the department, 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.
(E) To expand upon or preserve existing child care operations.

(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 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. The interest rate for a direct loan shall be set at the time of application, fixed for the term of the loan, and set at a rate equivalent to the Surplus Money Investment Fund rate in effect on December 31 of the preceding calendar year. Reasonable loan fees and points may be charged to applicants and borrowers, 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, but not be limited to, sole proprietorships, partnerships, proprietary and nonprofit corporations, and local public agencies that are responsible for contracting with or providing licensed child care and development services. Eligible facilities shall include licensed full-day and part-day child care and development facilities and family day care homes serving more than six children.

(d) 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 input regarding program priorities that shall be considered in the funding 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 shall include families transitioning to work or other lower income families. For purposes of this section, "lower income" shall have the same meaning as "income eligible" as set forth in Section 8263.1.

(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 that serve more than six children efficiently and effectively, 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. A loan to a family day care home provider made pursuant to this subdivision shall not be subject

to the 50-percent investment restriction contained in paragraph (2) of subdivision (e) of Section 8277.5.

(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.

CHAPTER 493

An act to amend Section 19801 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 19801 of the Welfare and Institutions Code is amended to read:

19801. An independent living center shall:

(a) Be a private, nonprofit organization controlled by a board of directors. A majority of the board shall be comprised of individuals with disabilities.

(b) Be staffed by persons trained to assist persons with disabilities in achieving social and economic independence. The staff shall include as large a proportion as is practicable of individuals with disabilities.

(c) Provide, but not be limited to, the following services to individuals with disabilities:

(1) Peer counseling.

(2) Advocacy.

(3) Attendant referral.

(4) Housing assistance.

(5) Information and referral.

(d) Provide other services and referrals as may be deemed necessary, such as transportation, job development, equipment

maintenance and evaluation, training in independent living skills, mobility assistance, assistive technology, and communication assistance. Assistive technology may include information and outreach about appropriate assistive technology devices or services and referrals that will enable individuals to gain access to assistive technology in order to meet their needs and expand options for independence and productivity. Assistive technology activities shall involve collaboration with the Department of Rehabilitation and the nonprofit contractor selected to implement the federal Assistive Technology Act of 1998 (P.L. 105-394), which shall serve as the framework for offering assistance to individuals with disabilities.

(e) Promote and practice the independent living philosophy of:

(1) Consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center.

(2) Self-help and self-advocacy.

(3) Development of peer relationships and peer role models.

(4) Equal access of individuals with disabilities to society and to all services, programs activities, resources, and facilities, whether public or private and regardless of the funding source.

CHAPTER 494

An act to amend Sections 13700, 13710, and 13710.5 of the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 13700 of the Business and Professions Code is amended to read:

13700. (a) "Automotive product" means engine coolant or antifreeze, prediluted engine coolant or prediluted antifreeze, brake fluid, and automatic transmission fluid.

(b) "Automatic transmission fluid" means a product intended for use in a passenger vehicle, other than a bus, as either a lubricant, coolant, or liquid medium in any type of fluid automatic transmission, or any other type of unit through which, or by which, force, energy, or power is transferred from a motor vehicle engine by hydraulic means to the driving assembly.

(c) "Brake fluid" means the fluid intended for use as the liquid medium through which force is transmitted in the hydraulic brake system of a vehicle operated upon the highways.

(d) "Carton" means the package or wrapping in which a number of containers are shipped or stored.

(e) "Container" means any receptacle in which a commodity is immediately contained when sold, but does not mean a carton or wrapping in which a number of receptacles are shipped or stored, or a tank car or truck.

(f) "Engine coolant" or "antifreeze" means any substance or preparation, regardless of its origin, intended to be diluted before use as the cooling medium in the cooling system of an internal combustion engine to provide protection against freezing, overheating, and corrosion of the cooling system, or any product intended to be diluted before use which is labeled to indicate or imply that it will prevent freezing or overheating of the cooling system of an internal combustion engine.

(g) "Label" means all written, printed, or graphic representations, in any form whatsoever, imprinted upon or affixed to any container or accompanying any product referred to in this chapter.

(h) "Prediluted engine coolant" or "prediluted antifreeze" means any substance or preparation, regardless of its origin, intended or labeled for use full strength as the cooling medium or as a top off in the cooling system of an internal combustion engine to provide or supplement protection against freezing, overheating, or corrosion of the cooling system.

(i) "Principal display panel" means that part of the label that is designed to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase.

SEC. 2. Section 13710 of the Business and Professions Code is amended to read:

13710. (a) (1) The department shall establish specifications for engine coolants and antifreeze, and prediluted engine coolants and prediluted antifreeze that promote the public safety in the operation of motor vehicles.

(2) In addition to paragraph (1), if the American Society for Testing and Materials adopts standards for recycled engine coolants and antifreeze, the department, on or before January 1, 2002, shall establish specifications for recycled engine coolants and antifreeze, and recycled prediluted engine coolants and antifreeze that promote the public safety in the operation of motor vehicles.

(3) The chemical, physical, and performance specifications for engine coolants and antifreeze and prediluted engine coolants and prediluted antifreeze under paragraphs (1) and (2) shall not fall below the minimum specifications, if any, established by the American Society for Testing and Materials. Engine coolant and antifreeze shall not contain, after dilution with 30 percent water and subsequent mixing, visually identifiable suspended matter or sediment. Prediluted engine coolant and prediluted antifreeze shall not contain, after mixing, visually identifiable suspended matter or sediment.

(4) For purposes of this subdivision, the department shall adopt testing procedures and shall specify a virgin reference coolant that it finds is recognized as standard in the industry. Alcohol-based coolants and antifreeze, excluding glycols, are not suitable for use in automotive engines and shall not be sold or distributed for automotive use.

(b) Any automatic transmission fluid sold without limitation as to type of transmission for which it is intended, shall meet all automotive manufacturers' recommended requirements for transmissions in general use in the state. Automatic transmission fluids that are intended for use only in certain transmissions, as disclosed on the label of its container, shall meet the latest automotive manufacturers' recommended requirements for those transmissions.

(c) The department shall establish specifications for brake fluid that promote the public safety in the operation of automotive vehicles. The specifications for brake fluid shall not fall below the minimum specifications established by the National Highway Traffic Safety Administration of the United States Department of Transportation.

(d) Any manufacturer or packager of any product regulated by this chapter and sold in the state shall provide, upon request to duly authorized representatives of the department, documentation of any claim made upon their products' label.

SEC. 3. Section 13710.5 of the Business and Professions Code is amended to read:

13710.5. (a) The department may grant a variance from the chloride standard adopted pursuant to Section 13710 for recycled engine coolants and antifreeze, upon application by a producer of engine coolants or antifreeze or the manufacturer of an engine coolant or antifreeze recycling system, and upon a demonstration to the satisfaction of the department of compliance with all of the following conditions:

(1) The chloride content of the recycled engine coolant or antifreeze is less than 150 parts per million (150 ppm).

(2) The recycled engine coolant or antifreeze otherwise complies with standards adopted by the department pursuant to Section 13710 for engine coolants or antifreeze.

(3) The recycled engine coolant or antifreeze passes tests adopted by the department as standard in the industry for storage stability and compatibility, and electrochemical pitting.

(4) The recycled engine coolant or antifreeze, when tested pursuant to procedures adopted by the department for storage stability and compatibility, shall visually exhibit similar or less precipitate than a virgin reference coolant. For purposes of this paragraph, the department shall adopt testing procedures and shall specify a virgin reference coolant that it finds is recognized as standard in the industry.

(b) The department shall conduct random sampling, at a frequency to be determined by the department, to determine whether the recycled engine coolant or antifreeze subject to a variance granted pursuant to this section complies with the conditions of the variance.

(c) As used in this section, "engine coolant" or "antifreeze" includes prediluted engine coolant or antifreeze.

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

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.

CHAPTER 495

An act to add Sections 13191 and 13192 to the Water Code, relating to water.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 13191 is added to the Water Code, to read:

13191. (a) The state board shall convene an advisory group or groups to assist in the evaluation of program structure and effectiveness as it relates to the implementation of the requirements of Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)), and applicable federal regulations and monitoring and assessment programs. The advisory group or groups shall be comprised of persons concerned with the requirements of Section 303(d) of the Clean Water Act. The state board shall provide public notice on its website of any meetings of the advisory group or groups and, upon the request of any party shall mail notice of the time and location of any meeting of the group or groups. The board shall also ensure that the advisory group or groups meet in a manner that facilitates the effective participation of the public and the stakeholder participants.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before November 30, 2000, and annually thereafter until November 30, 2002, the state board shall report to the Legislature on the structure and effectiveness of its water quality program as it

relates to Section 303(d) of the Clean Water Act. The report may include the information required to be submitted by the board to the United States Environmental Protection Agency pursuant to Section 305(b) of the Clean Water Act, and any information required to be submitted to the Legislature pursuant to the Supplemental Report of the Budget Act of 1999. In formulating its report, the state board shall consider any recommendations of the advisory group or groups.

SEC. 2. Section 13192 is added to the Water Code, to read:

13192. (a) Notwithstanding Section 7550.5 of the Government Code, the state board, on or before November 30, 2000, shall assess and report to the Legislature on the State Water Resources Control Board's and regional water control board's current surface water quality monitoring programs for the purpose of designing a proposal for a comprehensive surface water quality monitoring program for the state. The report shall include a proposal for the program, including steps and costs associated with developing the full program, cost of implementation of the program after development, and appropriate funding mechanisms, including any fee structure. The board may include in the report information required to be submitted to the United States Environmental Protection Agency pursuant to Section 305(b) of the Clean Water Act, information required to be submitted pursuant to paragraph (1) of subdivision (c) of Section 13181, and any information required to be submitted to the Legislature pursuant to the Supplemental Report of the Budget Act of 1999.

(b) In considering and designing the proposal, the state board shall address factors that include, but need not be limited to, all of the following:

(1) Physical, chemical, biological, and other parameters about which the program shall collect and evaluate data and other information and the reasonable means to ensure that the data is accurate in determining ambient water quality.

(2) The use of models and other forms of information not directly measuring water quality.

(3) Reasonable quality assurance and quality control protocols sufficient to allow sound management while allowing and encouraging, where appropriate, data collection by entities including citizens and other stakeholders, such as dischargers.

(4) A strategy to expeditiously develop information about waters concerning which the state presently possesses little or no information.

(5) A strategy for assuring that data collected as part of monitoring programs, and any associated quality assurance elements associated with the data collection, be made readily available to the public.

(6) A strategy for assessing and characterizing discharges from nonpoint sources of pollution and natural background sources.

(7) A strategy to prioritize and allocate resources in order to effectively meet water quality monitoring goals.

(c) Nothing in this section affects the authority of the regional water quality control boards.

CHAPTER 496

An act to amend Sections 48020, 48021, and 48028 of the Public Resources Code, relating to solid waste, and making an appropriation therefor.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 48020 of the Public Resources Code is amended to read:

48020. (a) For purposes of this article, the following terms have the following meaning:

(1) "Codisposal site" means a hazardous substance release site listed pursuant to Section 25356 of the Health and Safety Code, where the disposal of hazardous substances, hazardous waste, and solid waste has occurred.

(2) "Trust fund" means the Solid Waste Cleanup Trust Fund created pursuant to Section 48027.

(b) The board shall, on January 1, 1994, initiate a program for the cleanup of solid waste disposal sites and for the cleanup of solid waste at codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for timely remediation, and where cleanup is needed to protect public health and safety or the environment.

(c) The board shall not expend more than 5 percent of the funds appropriated for the purpose of the program by a statute other than the Budget Act to administer that program, unless a different amount is otherwise appropriated to administer the program in the annual Budget Act. If a different amount is appropriated to administer the program in the annual Budget Act, it shall be set forth in a separate line item. All remaining funds appropriated for the purposes of the program shall be expended on direct cleanup or emergency actions at solid waste disposal sites and for solid waste at codisposal sites.

SEC. 2. Section 48021 of the Public Resources Code is amended to read:

48021. (a) In prioritizing the sites for cleanup pursuant to Section 48020, the board shall consider the degree of risk to public health and safety and the environment posed by conditions at a site, the ability of the site owner to clean up the site without monetary assistance, the ability of the board to adequately clean up the site with

available funds, maximizing the use of available funds, and other factors as determined by the board.

(b) In administering the program authorized by Section 48020, the board may expend funds directly for cleanup, provide loans to parties who demonstrate the ability to repay state funds, and provide matching grants to public entities, to assist in site cleanup.

(c) In addition to the expenditures specified in subdivision (b), the board may expend a portion of the funds appropriated for the program to abate illegal disposal sites. For the purposes of this subdivision, the board may provide grants to public entities. Where funds are provided by the board to address illegal disposal sites within a jurisdiction, the local enforcement agency shall provide ongoing enforcement to prevent recurring illegal disposal at the site.

(d) In developing and implementing the program, the board shall consult with certified local enforcement agencies and the regional water boards.

SEC. 3. Section 48028 of the Public Resources Code is amended to read:

48028. Any funds appropriated for the purpose of the program that are not expended shall remain in the trust fund for future expenditure by the board for the purposes of this article or until this article is repealed.

CHAPTER 497

An act to add Sections 120966 and 120968 to the Health and Safety Code, relating to AIDS.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 120966 is added to the Health and Safety Code, to read:

120966. (a) (1) The program established under this chapter shall make available to any eligible person under this chapter any antiviral drug that is approved by the federal Food and Drug Administration for treatment of human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS), prescribed by the beneficiary's medical care provider, and approved by the AIDS Drug Assistance Program Medical Advisory Committee of the Office of AIDS if determined by the State Department of Health Services that the new antiviral drug would be used as an additional treatment option, and anticipated client utilization represents no significant additional cost to the program and does not require the removal of another antiviral drug from the formulary.

(2) Any federal Food and Drug Administration-approved antiviral drug that is determined by the State Department of Health Services to represent a significant additional cost to the program shall be made available if, after an analysis is conducted by the department, it determines that the program has an adequate budget to fund the addition of the new drug.

(3) The department shall use all reasonable means to ensure that the determination required in paragraph (1) or the analysis required by paragraph (2) are performed as promptly as possible.

(b) Notwithstanding any other provision of law, any antiviral drug that is approved pursuant to paragraph (1) of subdivision (a) for addition to the formulary of drugs program established by this chapter shall be available to patients covered by the program established by this chapter within 30 days of the Office of AIDS being notified by the drug's manufacturer of the FDA approval.

SEC. 2. Section 120968 is added to the Health and Safety Code, to read:

120968. The Office of AIDS shall report to the Legislature no later than October 1, 2000, the status of consumer protections for the AIDS drug program established pursuant to this chapter, including a report on the contractor's performance in each of the following areas:

(a) Filling of patient prescriptions within 24 hours of submission, and shipping of mail order prescriptions within 48 hours.

(b) Subcontracting with any willing provider, including a report on any denials of contracts with providers and the reason for denial.

(c) Provision of information regarding program policies, procedures, enrollment procedures, eligibility guidelines, and lists of drugs covered in appropriate literacy levels in English, Spanish, Mandarin/Cantonese, Tagalog, and in other languages as determined by the department.

(d) Development of a timely and accessible grievance procedure for clients, promotion of that procedure among clients, and utilization.

CHAPTER 498

An act to amend and repeal Section 1620 of the Insurance Code, relating to insurance.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 1620 of the Insurance Code, as amended by Section 1 of Chapter 687 of the Statutes of 1996, is amended to read:

1620. (a) The provisions of the preceding sections of this article shall not apply to any action, suit or proceeding against any unauthorized foreign or alien insurer arising out of any contract of insurance effected in accordance with Section 1760, 1760.5, 1763, or 1763.1, or, if the contract is governed by and complies with the laws of the state in which the contract was entered. The provisions of Section 1610 shall apply to any action, suit, or proceeding under this section unless the insurer has designated an agent in California for service of process or the contract contains a provision designating a resident of this state or any firm of which one member is a resident of this state to be its true and lawful attorney upon whom may be served all lawful process in any such action, suit or proceeding.

(b) In any such action, suit or proceeding arising out of any such contract of insurance, the court may require the insurer to file a bond, in an amount sufficient to secure the payment of any final judgment which may be rendered unless one or more of the following is applicable:

(1) The insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities in trust or otherwise, sufficient and available to satisfy any such final judgment and that it will pay the judgment without requiring suit to be brought thereon in the state where the securities or funds are located.

(2) At the time the insurer files any pleading in any action, suit, or proceeding instituted against it, the insurer is listed as an eligible surplus line insurer in accordance with subdivision (f) of Section 1765.1, unless by facts presented to the court there is created a reasonable doubt as to the present ability of the insurer to satisfy any final judgment in the action, suit, or proceeding. Upon request of a party or the court, the unauthorized foreign or alien insurer or reinsurer shall provide the court and the party requesting the bond with copies of documents relating to the financial condition of the insurer, including, but not limited to, copies of the insurer's most recent annual statement and audited financial report and, where applicable, a certified copy of the trust agreement required by subdivision (b) of Section 1765.1 and a verified copy of the most recent quarterly statement or list of assets in the trust.

(3) With respect to a contract of reinsurance issued in accordance with Section 1760.5, the reinsurer has complied with the provisions of this code necessary to permit the ceding insurer to take credit on its financial statement for the reinsurance as set forth in Section 922.4 or 922.5.

SEC. 2. Section 1620 of the Insurance Code, as added by Section 2 of Chapter 687 of the Statutes of 1996, is repealed.

CHAPTER 499

An act to amend Sections 23800 and 23805 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 23800 of the Business and Professions Code is amended to read:

23800. The department may place reasonable conditions upon retail licensees or upon any licensee in the exercise of retail privileges in the following situations:

(a) If grounds exist for the denial of an application for a license or where a protest against the issuance of a license is filed and if the department finds that those grounds may be removed by the imposition of those conditions.

(b) Where findings are made by the department which would justify a suspension or revocation of a license, and where the imposition of a condition is reasonably related to those findings. In the case of a suspension, the conditions may be in lieu of or in addition to the suspension.

(c) Where the department issues an order suspending or revoking only a portion of the privileges to be exercised under the license.

(d) Where findings are made by the department that the licensee has failed to correct objectionable conditions within a reasonable time after receipt of notice to make corrections given pursuant to subdivision (e) of Section 24200.

(e) Upon notice to the licensee from the department adopting conditions requested by the local governing body, or its designated subordinate officer or agency, in whose jurisdiction the license is located. The request for conditions shall be supported by substantial evidence that the problems either on the premises or in the immediate vicinity identified by the local governing body or its designated subordinate officer or agency will be mitigated by the conditions. Upon receipt of the request for conditions, the department shall either adopt the conditions requested or notify the local governing body, or its designated subordinate officer or agency, in writing of its determination that there is not substantial evidence that the problem exists or that the conditions would not mitigate the problems identified. The department may adopt conditions requested pursuant to this paragraph only when the request is filed within the time authorized for a local law enforcement agency to file a protest or proposed conditions pursuant to Section 23987.

SEC. 2. Section 23805 of the Business and Professions Code is amended to read:

23805. The proceedings specified in Section 23800(a), (b), (c), (d), and (e) shall be conducted in the same manner as is required for other proceedings involving petitions, protests or accusations, and the right of a respondent in the proceedings to appeal shall include the right to appeal from an order imposing conditions upon the licenses involved in the proceedings. If the department gives notice of conditions pursuant to subdivision (e) of Section 23800 or denies a petition filed under Section 23803, the licensee or transferee may, within 10 days after the mailing of the denial, make a written request for a hearing. The proceedings at the hearing shall be conducted as provided in Section 24300, and the respondent shall have the same rights of appeal therefrom as in disciplinary actions.

CHAPTER 500

An act to amend Section 668 of the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2, or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in

the county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) (1) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or by imprisonment in the state prison or in the county jail for not more than one year, or by both that fine and imprisonment.

(2) In imposing the minimum fine required by this subdivision, the court shall take into consideration the defendant's ability to pay the fine and, in the interest of justice for reasons stated in the record, may reduce the amount of that minimum fine to less than the amount otherwise required by this subdivision.

(d) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as

designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(2) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. A person ordered to treatment pursuant to this paragraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the person's county of residence or employment, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section

192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(k) A person who flees the scene of the crime after committing a violation of Section 191.5, paragraph (1) or (3) of subdivision (c) of Section 192, or subdivision (a) or (c) of Section 192.5 of the Penal

Code shall be subject to subdivision (c) of Section 20001 of the Vehicle Code.

CHAPTER 501

An act to amend Section 41960.2 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 41960.2 of the Health and Safety Code is amended to read:

41960.2. (a) All installed systems for the control of gasoline vapors resulting from motor vehicle fueling operations shall be maintained in good working order in accordance with the manufacturer's specifications of the system certified pursuant to Section 41954.

(b) Whenever a gasoline vapor recovery control system is repaired or rebuilt by someone other than the original manufacturer or its authorized representative, the person shall permanently affix a plate to the vapor recovery control system that identifies the repairer or rebuilder and specifies that only certified equipment was used. In addition, a rebuilder of a vapor control system shall remove any identification of the original manufacturer if the removal does not affect the continued safety or performance of the vapor control system.

(c) (1) The executive officer of the state board shall identify and list equipment defects in systems for the control of gasoline vapors resulting from motor vehicle fueling operations that substantially impair the effectiveness of the systems in reducing air contaminants. The defects shall be identified and listed for each certified system and shall be specified in the applicable certification documents for each system.

(2) On or before January 1, 2001, and at least once every three years thereafter, the list required to be prepared pursuant to paragraph (1) shall be reviewed by the executive officer at a public workshop to determine whether the list requires an update to reflect changes in equipment technology or performance.

(3) Notwithstanding the timeframes for the executive officer's review of the list, as specified in paragraph (2), the executive officer may initiate a public review of the list upon a written request that demonstrates, to the satisfaction of the executive officer, the need for such a review. If the executive officer determines that an update is

required, the update shall be completed no later than 12 months after the date of the determination.

(d) When a district determines that a component contains a defect specified pursuant to subdivision (c), the district shall mark the component "Out of Order." No person shall use or permit the use of the component until the component has been repaired, replaced, or adjusted, as necessary, and the district has reinspected the component or has authorized use of the component pending reinspection.

(e) Where a district determines that a component is not in good working order but does not contain a defect specified pursuant to subdivision (c), the district shall provide the operator with a notice specifying the basis on which the component is not in good working order. If, within seven days, the operator provides the district with adequate evidence that the component is in good working order, the operator shall not be subject to liability under this division.

CHAPTER 502

An act to amend Sections 8226 and 8552.6 of, and to add Sections 8043.2, 10502.7, and 10656 to, the Fish and Game Code, relating to marine resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 8043.2 is added to the Fish and Game Code, to read:

8043.2. (a) A commercial fisherman licensed pursuant to Section 8033.5 who sells fish from a vessel directly to the ultimate consumer and who is required pursuant to Section 8043 to make a landing receipt shall make a landing receipt in either of the following ways:

(1) For each individual sale by that fisherman at the time of the sale.

(2) For each day that the fisherman is engaged in one or more sales to the ultimate consumers, the fisherman shall maintain an accurate tally sheet of sales, which shall include complete header and signature box information filled out prior to any sales, and the number of pounds by species of fish sold. The total of the daily sales shall be recorded at the completion of sales for that day on a landing receipt. A copy of the completed tally sheet shall be attached to the corresponding landing receipt. The original completed tally sheet shall be attached to the fisherman's copy of the corresponding landing receipt and maintained for a period of four years.

(b) A commercial fisherman licensed pursuant to Section 8033.5 who sells directly to the ultimate consumer, or a commercial fisherman who sells or delivers fish that the fisherman has taken to any person who is not licensed under Article 7 (commencing with Section 8030) to conduct the activities of a fish receiver, shall not be considered a weighmaster for purposes of Chapter 7 (commencing with Section 12700) of Division 5 of the Business and Professions Code.

(c) A commercial fisherman selling his or her own catch to the ultimate customer, upon request by an authorized agent or employee of the department, shall immediately make available all fish in possession of the fisherman for inspection and sampling by the agent or employee. Pursuant to Section 8226, the fisherman shall relinquish the head from any sampled salmon with a missing adipose fin.

SEC. 2. Section 8226 of the Fish and Game Code is amended to read:

8226. (a) Notwithstanding any measurement requirements under this code, and to implement the department's salmon tagging program, any person in possession of a salmon with a missing adipose fin, the small, fleshy fin on the back of the fish between the back fin and the tail, upon request by an authorized agent or employee of the department, shall immediately relinquish the head of the salmon to the state, at no charge, for recovery of any coded-wire tag. The head may be removed by the fish owner or, if removed by the official department representative, the head shall be removed in a manner to minimize loss of salmon flesh and the salmon shall immediately be returned to the rightful owner.

(b) It is unlawful to intentionally conceal, cull, or release into the waters, a salmon with a missing adipose fin that it is otherwise legal to possess.

SEC. 3. Section 8552.6 of the Fish and Game Code is amended to read:

8552.6. (a) Notwithstanding Section 8552, a herring permit may be issued to two individuals if the individuals are married to each other and file with the department a certified copy of their certificate of marriage and a declaration under penalty of perjury, or a court order, stating that the permit is community property or if (1) both are engaged in the herring roe fishery either by fishing aboard the vessel or by personally participating in the management, administration, and operation of the partnership's herring fishing business and (2) there is a partnership constituting equal, 50 percent, ownership in a herring fishery operation, including a vessel or equipment, and that partnership is demonstrated by any two of the following:

(A) A copy of a federal partnership tax return.

(B) A written partnership agreement.

(C) Joint ownership of a fishing vessel used in the herring fishery as demonstrated on federal vessel license documents.

(b) For purposes of this section, a herring permit does not constitute a herring fishing operation. A herring permit may be transferred to one of the partners to be held thereafter in that partner's name only if that partner has not less than 10 points computed pursuant to paragraph (2) of subdivision (a) of Section 8552.8 and there has been a death or retirement of the other partner, a dissolution of partnership, or the partnership is dissolved by a dissolution of marriage or decree of legal separation. A transfer under this section shall be authorized only if proof that the partnership has existed for three or more consecutive years is furnished to the department or a certified copy of a certificate of marriage is on file with the department and the permit is community property as provided in subdivision (a). The transferor of a permit shall not, by reason of the transfer, become ineligible to participate further in the herring fishery or to purchase another permit.

(c) Notwithstanding subdivision (b), in the event of the death of one of the partners holding a herring permit pursuant to this section, where the partnership existed for longer than six months but less than three years and the surviving partner does not have the minimum points pursuant to subdivision (b) to qualify for a permit transfer, the permit may be transferred on an interim basis for a period of not more than 10 years to the surviving partner if an application is submitted to the department within one year of the deceased partner's death and the surviving partner participates in the fishery for the purpose of achieving the minimum number of points to be eligible for a permit transfer pursuant to Section 8552.2. The interim permit shall enable the surviving partner to participate in the herring fishery. At the end of the interim permit period, the surviving partner, upon application to the department, may be issued the permit if he or she has participated in the fishery and gained the minimum number of experience points for a permit.

SEC. 4. Section 10502.7 is added to the Fish and Game Code, to read:

10502.7. (a) The director may appoint the Director of the Bodega Marine Life Refuge.

(b) The Director of the Bodega Marine Life Refuge may authorize any person to enter the Bodega Marine Life Refuge for the purpose of taking fish, invertebrates, or marine plants for scientific study and to take or possess fish, invertebrates, or marine plants for scientific study.

(c) The Director of the Bodega Marine Life Refuge may authorize any person to anchor a vessel in the Bodega Marine Life Refuge for the purpose of scientific study.

SEC. 5. Section 10656 is added to the Fish and Game Code, to read:

10656. (a) Except as expressly provided in this division, it is unlawful to enter the Bodega Marine Life Refuge for the purpose of taking or possessing any fish, marine invertebrate, or marine plant,

or to take or possess any fish, marine invertebrate, or marine plant in the Bodega Marine Life Refuge.

(b) Except as permitted by federal law or emergency caused by hazardous weather, it is unlawful to anchor or moor a vessel in the Bodega Marine Life Refuge without authorization by the Director of the Bodega Marine Life Refuge pursuant to Section 10502.7.

(c) This section does not prohibit or restrict navigation in the Bodega Marine Life Refuge pursuant to federal law.

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.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect fish and marine species at the earliest time possible, it is necessary for this act to take effect immediately.

CHAPTER 503

An act to amend Sections 10200, 10212, 10216, 10222, 10230, 10231, 10234, 10236, 10239, 10240, 10241, 10242, 10243, 10251, 10252, 10254, 10261, and 10276 of, and to add Sections 10224, 10231.5, 10235.5, 10260.5, and 10262.1 to, the Public Resources Code, relating to agricultural lands, and making an appropriation therefor.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 10200 of the Public Resources Code is amended to read:

10200. This division shall be known, and may be cited, as the California Farmland Conservancy Program Act. Any other references in this division to the Agricultural Land Stewardship Program Act of 1995 shall hereafter mean the California Farmland Conservancy Program Act.

SEC. 1.5. Section 10211 of the Public Resources Code is amended to read:

10211. "Agricultural conservation easement" or "easement" means an interest in land, less than fee simple, which represents the

right to prevent the development or improvement of the land, as specified in Section 815.1 of the Civil Code, for any purpose other than agricultural production. The easement shall be granted for the California Farmland Conservancy Program by the owner of a fee simple interest in land to a local government, nonprofit organization, resource conservation district, , or to a regional park or open-space district or regional park or open-space authority that has the conservation of farmland among its stated purposes, as prescribed by statute, or as expressed in the entity's locally adopted policies, for the California Farmland Conservancy Program. It shall be granted in perpetuity as the equivalent of covenants running with the land.

SEC. 2. Section 10212 of the Public Resources Code is amended to read:

10212. "Applicant" means a city, county, nonprofit organization, resource conservation district, , or to a regional park or open-space district or regional park or open-space authority that has the conservation of farmland among its stated purposes, as prescribed by statute, or as expressed in the entity's locally adopted policies, that applies for a grant to acquire an agricultural conservation easement.

SEC. 3. Section 10216 of the Public Resources Code is amended to read:

10216. "Fund" means the California Farmland Conservancy Program Fund created pursuant to Section 10230.

SEC. 4. Section 10222 of the Public Resources Code is amended to read:

10222. "Program" means the California Farmland Conservancy Program established under this division.

SEC. 5. Section 10224 is added to the Public Resources Code, to read:

10224. "Resource conservation district" means a resource conservation district established pursuant to Division 9 (commencing with Section 9000).

SEC. 6. Section 10230 of the Public Resources Code is amended to read:

10230. (a) (1) The California Farmland Conservancy Program Fund is hereby created.

Except as provided in paragraph (2), the moneys in the fund shall, upon appropriation by the Legislature in the annual Budget Act, be used for the purposes of the program, which include the purchase of agricultural conservation easements, land improvement and planning grants, technical assistance provided by the department, technology transfer activities of the department, and administrative costs incurred by the department in administering the program.

(2) Notwithstanding paragraph (1), moneys may be deposited into the fund from federal grants, and gifts and donations that are designated and required by the donor to be used exclusively for the purposes of the program, and notwithstanding Section 13340 of the Government Code, those moneys are hereby continuously

appropriated to the department for expenditure for the purposes of this program.

(b) Not to exceed 10 percent of all grants made by the department pursuant to this division may be made for land improvement purposes and policy planning purposes. Not less than 90 percent of funds available for grants pursuant to this division shall be expended for the acquisition of interests in land.

SEC. 7. Section 10231 of the Public Resources Code is amended to read:

10231. Money available from the fund shall be utilized in accordance with the expenditures and distribution authorized, required, or otherwise provided in the program for the acquisition of agricultural conservation easements. This includes all direct costs incidental to the acquisition of agricultural conservation easements, including costs associated with a loss in property tax revenues resulting from the acquisition of those agricultural conservation easements. Direct costs paid to the applicant shall not exceed 10 percent of the value of the easements for which the costs were incurred.

SEC. 8. Section 10231.5 is added to the Public Resources Code, to read:

10231.5. The department may accept donations of funds if the department is the designated beneficiary of the donation and it agrees to use the funds for purposes of the program in a county specified by the donor. Any donation made to the department pursuant to this section is subject to the requirements of Sections 11005 and 16302 of the Government Code.

SEC. 9. Section 10234 of the Public Resources Code is amended to read:

10234. Every application for a grant for the acquisition of an agricultural conservation easement shall be accompanied by a resolution from the governing body of the local government in which the proposed easement is located certifying both of the following:

(a) The easement proposal meets the eligibility criteria set forth in Section 10251.

(b) The easement proposal has been approved by the appropriate local governmental governing body.

SEC. 10. Section 10235.5 is added to the Public Resources Code, to read:

10235.5. The department may establish a payment system for the purchase of an agricultural conservation easement that is mutually satisfactory to the department and the seller of the easement, provided that full payment for the easement is secured.

SEC. 11. Section 10236 of the Public Resources Code is amended to read:

10236. If the funds are used for the acquisition of an agricultural conservation easement pursuant to a local transfer of development rights program, upon the sale of the easement and its attendant

development rights, the entity that holds the easement shall reimburse the fund by an amount equal to the fair market value of the easement.

SEC. 12. Section 10239 of the Public Resources Code is amended to read:

10239. The director shall disburse funds to applicants for the acquisition of fee title to agricultural land from owners only if all of the following conditions are met:

(a) The applicant agrees, upon acquisition of the property, to treat the property as encumbered by an agricultural conservation easement subject to Section 10262.

(b) The applicant sells the fee title subject to an agricultural conservation easement to a private landowner within three years of the acquisition of the fee title.

(c) The applicant reimburses the fund by an amount equal to the fair market value of the land less the value of the easement and associated transaction costs within 30 days after the sale of the restricted fee title.

SEC. 13. Section 10240 of the Public Resources Code is amended to read:

10240. (a) The department shall adopt rules and regulations for the implementation of this division, including the standards, criteria, and requirements necessary for approval of local government programs for acquiring agricultural conservation easements, including the eligibility criteria provided in Section 10251. The department may examine alternative agreements for the purpose of evaluating the substantive and fiscal benefits of proposals under this program.

(b) Rules or regulations adopted by the department pursuant to this section shall be adopted in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 14. Section 10241 of the Public Resources Code is amended to read:

10241. The department shall adopt the criteria necessary for its approval of grant applications from applicants for the acquisition of agricultural conservation easements.

SEC. 15. Section 10242 of the Public Resources Code is amended to read:

10242. The director shall review, and approve or disapprove, grant applications from applicants for the acquisition of agricultural conservation easements on agricultural land or the acquisition of fee title to agricultural land pursuant to Section 10239.

SEC. 16. Section 10243 of the Public Resources Code is amended to read:

10243. The department shall allocate available state funds to applicants for the acquisition of agricultural conservation easements.

However, no governmental agency shall condition the issuance of an entitlement to use on a landowner's granting of a fee interest or less than a fee interest in property pursuant to this chapter.

SEC. 17. Section 10251 of the Public Resources Code is amended to read:

10251. Agricultural conservation easements shall meet all of the following eligibility criteria prior to review pursuant to the selection criteria set forth in Section 10252:

(a) The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.

(b) The applicable city or county has a general plan that demonstrates a long-term commitment to agricultural land conservation. This commitment shall be reflected in the goals, objectives, policies, and implementation measures of the plan, as they relate to the area of the county or city where the easement acquisition is proposed.

(c) The grant proposal is consistent with the city or county general plan, and the governing body of the city or county, by resolution, approves the easement proposal. For land within a city's sphere of influence, both the city and the county in which the city is located shall, by passage of a resolution, approve the grant proposal and the easement proposal.

(d) Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future.

SEC. 18. Section 10252 of the Public Resources Code is amended to read:

10252. If the department determines that the proposed agricultural conservation easement meets the eligibility criteria set forth in Section 10251, the proposal shall be reviewed based upon the extent to which it satisfies the following selection criteria:

(a) The quality of the agricultural land, based on land capability, farmland mapping and monitoring program definitions, productivity indices, and other soil, climate, and vegetative factors.

(b) The proposal meets multiple natural resource conservation objectives, including, but not limited to, wetland protection, wildlife habitat conservation, and scenic open-space preservation.

(c) The city or county demonstrates a long-term commitment to agricultural land conservation as demonstrated by the following:

(1) The general plan and related land use policies of the city or county.

(2) Policies of the local agency formation commission.

(3) California Environmental Quality Act policies and procedures.

(4) The existence of active local agricultural land conservancies or trusts.

(5) The use of an effective right-to-farm ordinance.

(6) Applied strategies for the economic support and enhancement of agricultural enterprise, including water policies, public education, marketing support, and consumer and recreational incentives.

(7) Other relevant policies and programs.

(d) If the land is in a county that participates in the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code), the land proposed for protection is within a county or city designated agricultural preserve.

(e) The land proposed for conservation is within two miles outside of the exterior boundary of the sphere of influence of a city as established by the local agency formation commission.

(f) The applicant demonstrates fiscal and technical capability to effectively carry out the proposal. Technical capability may be demonstrated by agricultural land conservation expertise on the governing board or staff of the applicant, or through partnership with an organization that has that expertise.

(g) The proposal demonstrates a coordinated approach among affected landowners, local governments, and nonprofit organizations. If other entities are affected, there is written support from those entities for the proposal and a willingness to cooperate. The support of neighboring landowners who are not involved in the proposal shall be considered.

(h) The conservation of the land supports long-term private stewardship and continued agricultural production in the region.

(i) The proposal demonstrates an innovative approach to agricultural land conservation with a potential for wide application in the state.

(j) The amount of matching funds and in-kind services contributed by local governments.

(k) The price of the proposed easement purchase is cost-effective in comparison to the actual easement value.

(*l*) Other relevant considerations established by the director.

SEC. 19. Section 10254 of the Public Resources Code is amended to read:

10254. Before an application for an agricultural conservation easement is approved by the department pursuant to the program, the entity that is applying for the easement shall provide public notice to parties reasonably likely to be interested in the property, including the county and city in which the property is located, conservation, agricultural, and development organizations, adjacent property owners, and the general public. Written notice shall be provided to adjacent landowners as indicated in the county tax rolls not less than 30 days prior to the expected date of the approval of the local government required pursuant to subdivision (b) of Section

10234. The notice to the county and city shall be provided not less than 30 days before the entity applies for the grant to acquire an agricultural conservation easement.

SEC. 20. Section 10260.5 is added to the Public Resources Code, to read:

10260.5. For purposes of this division, an agricultural easement shall be recorded in the county recorder's office in each county in which the real property affected is located. Once recorded, the easement shall attach to the real property for an indefinite period, unless the agricultural conservation easement is subsequently terminated, as provided in this division.

SEC. 21. Section 10261 of the Public Resources Code is amended to read:

10261. (a) Whenever any entity exercises the power of eminent domain to acquire land subject to an agricultural conservation easement under this program, the condemnor shall pay just compensation to the owner of the land in fee and to the owner of the easement as follows:

(1) The owner of the land in fee shall be paid the full value that would have been payable to the owner but for the existence of the easement less the value of the easement at the time of condemnation.

(2) The program, and any other contributing parties if so provided in the easement, shall be paid the value of the easement at the time of condemnation.

(b) The director may provide, by regulation, or, pursuant to the terms of the easement, that in the case of acquisition of the easement by a federal agency, that the agency shall agree to the amount of compensation paid for the easement that is determined pursuant to subdivision (a), or pay the current fair market value of the land subject to an agricultural easement. The director shall distribute the proceeds of a land sale that is made in accordance with the conditions set forth in subdivision (a).

SEC. 22. Section 10262.1 is added to the Public Resources Code, to read:

10262.1. Except as provided in Section 10238, an easement may, at the request of the landowner, establish provisions that are more restrictive than those restrictions prescribed in this division.

SEC. 23. Section 10276 of the Public Resources Code is amended to read:

10276. (a) If the termination of the agricultural conservation easement is approved pursuant to this division or pursuant to a judicial proceeding in a court of competent jurisdiction, the landowner shall repurchase the easement by paying to the fund and to any other contributing parties, if so provided in the easement, the difference, at that time, between the fair market value and the restricted value. That difference shall be determined by an appraisal approved by the state and conducted at the landowner's expense.

(b) If the landowner fails to complete the termination process by repurchasing the agricultural conservation easement within one year from the date of the department's approval of the termination of the easement, the termination approval shall lapse and the landowner shall wait at least one year before reapplying to terminate the easement.

(c) Money received from the repurchase of agricultural conservation easements shall be deposited in the fund and shall be available, upon appropriation, for the purposes set forth in this division, except as provided in subdivision (d).

(d) Where an easement was originally purchased with moneys from sources other than the program, the easement may require that moneys received from the repurchase of the easement be divided proportionally between the fund and any other funding source in amounts that are proportional to the original contribution made by each party that contributed to that purchase. If provided in an easement, a nonprofit organization that contributed to the purchase of an easement may recoup the actual amount of its contribution, plus an amount not exceeding 3 percent of the total amount of the contribution for administrative costs.

CHAPTER 504

An act to amend Section 74.5 of the Revenue and Taxation Code, relating to seismic improvements, and making an appropriation therefor.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 74.5 of the Revenue and Taxation Code is amended to read:

74.5. (a) For purposes of paragraph (4) of subdivision (c) of Section 2 of Article XIII A of the California Constitution, "newly constructed" and "new construction" does not include seismic retrofitting improvements and improvements utilizing earthquake hazard mitigation technologies, to an existing building or structure.

(b) For purposes of this section:

(1) "Seismic retrofitting improvements" means retrofitting or reconstruction of an existing building or structure, to abate falling hazards from structural or nonstructural components of any building or structure including, but not limited to, parapets, appendages, cornices, hanging objects, and building cladding that pose serious danger. "Seismic retrofitting improvements" also means either structural strengthening or providing the means necessary to reduce

seismic force levels that would otherwise be experienced by an existing building or structure during an earthquake, so as to significantly reduce hazards to life and safety while also providing for the substantially safe ingress and egress of building occupants during and immediately after an earthquake. "Seismic retrofitting improvements" does not include alterations, such as new plumbing, electrical, or other added finishing materials, made in addition to seismic-related work performed on an existing structure. "Seismic retrofitting" includes, but is not limited to, those items referenced in Appendix Chapters 5 and 6 of the Uniform Code for Building Conservation of the International Conference of Building Officials.

(2) "Improvements utilizing earthquake hazard mitigation technologies" means improvements to existing buildings identified by a local government as being hazardous to life in the event of an earthquake that utilize earthquake hazard mitigation technologies approved by the State Architect pursuant to Section 16102 of the Health and Safety Code.

(c) The property owner, primary contractor, civil engineer, or architect shall certify to the building department those portions of the project that are seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies. Upon completion of the project, the building department shall report the value of those portions of the project that are seismic retrofitting improvements and improvements utilizing earthquake hazard mitigation technologies to the county assessor.

(d) In order to receive the exclusion, the property owner shall notify the assessor prior to, or within 30 days of, completion of the project that he or she intends to claim the exclusion for seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies. The State Board of Equalization shall prescribe the manner and form for claiming the exclusion. All documents necessary to support the exclusion shall be filed by the property owner with the assessor on or before the following April 15.

(e) The exclusion from "newly constructed" and "new construction" under this section is not applicable to seismic safety reconstruction and improvements that qualify for the exclusion provided in subdivision (d) of Section 70.

(f) This section shall only apply to projects completed on or after January 1, 1991.

SEC. 2. The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 to the Seismic Safety Commission for programs pursuant to subdivision (d) of Section 8878.55 of the Government Code.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 4. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made for purposes of Section 1 of this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to Section 1 of this act.

CHAPTER 505

An act relating to parks and recreation.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. (a) The Legislature finds and declares that the Baldwin Hills area of Los Angeles, while currently used primarily as an active oil production area, has unique geographical and natural characteristics that offer the potential for the development of a world class urban park as oil production in the area declines or is consolidated.

(b) (1) The Secretary of the Resources Agency, in conjunction with the Director of Parks and Recreation, not later than November 1, 2000, shall conduct a study of the feasibility and desirability of expanding the Kenneth Hahn State Recreation Area to include all, or a substantial portion, of the Baldwin Hills area of the County of Los Angeles in order to provide for the creation of a major urban park to serve the entire Los Angeles area.

(2) The study required to be prepared pursuant to paragraph (1) shall be incorporated into any master plan that is prepared for the expansion of the Kenneth Hahn State Recreation Area.

CHAPTER 506

An act to add Section 40457 to the Health and Safety Code, relating to air quality.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 40457 is added to the Health and Safety Code, to read:

40457. (a) The south coast district board shall convene a task force, that shall, on or before July 1, 2000, review, and assist in updating, the south coast district's data base to ensure that any small business, as determined by the task force, that is located within the district and that may be affected by the adoption, amendment, or repeal of an air quality regulation by the district board, is included on the south coast district's mailing list.

(b) On and after July 1, 2000, the district shall mail, to each small business identified pursuant to subdivision (a) and to each local or regional authority within the district, notice of the time and place of any public workshop scheduled by the south coast district pursuant to Section 40440.7, to consider the adoption, amendment, or repeal of any district rule or regulation that may affect that small business or local or regional authority. The inadvertent failure to mail notice to any particular business or local or regional authority, as required by this subdivision, shall not invalidate any action taken by the district board regarding the adoption, amendment, or repeal of the district rule or regulation.

(c) In addition to the office of public adviser and small business assistance required to be maintained pursuant to Section 40448, the south coast district board shall establish a small business advisory group comprised of district board members, industry trade association representatives, and small business owners. The advisory group shall provide guidance to the district board in implementing this section and shall provide recommendations for public outreach, business assistance, and rulemaking activities. The advisory group shall meet on a regular basis, as determined by the district board.

(d) To the extent that the requirements of this section duplicate or overlap with the requirements established pursuant to Section 40448 or 40448.8, the district may combine or consolidate its activities in order to promote efficiency and nonduplication of effort.

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.

CHAPTER 507

An act to amend Section 48002 of, and to add Section 48002.5 to, the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 48002 of the Food and Agricultural Code is amended to read:

48002. (a) In addition to any other assessment, fees, or charges that may be required pursuant to this code, producers of navel oranges and Valencia oranges that are grown in this state and prepared for fresh market in the counties specified in subdivision (d) shall pay an assessment that shall not exceed 9 mills ($0.009) per carton for navel oranges and 4 mills ($0.004) per carton for Valencia oranges. The assessment shall be:

(1) Based on the number of cartons shipped.

(2) Used to reimburse agricultural commissioners, pursuant to a memorandum of understanding between the department and the commissioners, in the counties specified in subdivision (d) who meet the requirements of the inspection program as determined by the committee and concurred in by the secretary.

(3) Used to establish a reserve to fund the frost inspection program. The reserve amount shall be determined by the advisory committee. However, that amount shall not exceed the average annual expenditure for the program.

(4) Collected from the producer by the first handler. For the purposes of this chapter, "producer" means a grower of navel oranges or Valencia oranges and "handler" means a person or entity who receives navel oranges or Valencia oranges from a producer and who prepares the oranges for fresh market. If a producer prepares the oranges for market, the producer shall be deemed the handler.

(5) Remitted to the department by the first handler, along with an assessment form, at the end of each month during the marketing season.

(6) Deposited in the Department of Food and Agriculture Fund or, upon the recommendation of the committee, deposited in accordance with Section 227 or Article 2.5 (commencing with Section 230) of Chapter 2 of Part 1 of Division 1.

(b) In no case shall:

(1) The total amount reimbursed to all counties exceed the total amount collected from the producers in all counties, unless reserve moneys are required for the frost inspection program. However, the

authorized expenditures shall not exceed the combined total of reserve moneys and revenue received in that fiscal year.

(2) The reimbursement to any county exceed the amount approved by the committee and concurred in by the secretary.

(c) If the inspection program is terminated and there are insufficient funds to cover the cost of terminating the inspection program, the assessment shall continue until all those costs are recovered.

(d) Assessments collected pursuant to this section are for the purpose of conducting an inspection program in the Counties of Fresno, Kern, Madera, Orange, Riverside, San Bernardino, Santa Clara, Tulare, and Ventura. The county agricultural commissioners of those counties shall provide an inspection program if the expenses of the program are reimbursed pursuant to paragraph (2) of subdivision (a). A producer shall not be required to pay assessments unless the county agricultural commissioners of those counties provide an inspection program in accordance with this chapter, unless otherwise recommended by the committee and approved by the secretary.

SEC. 2. Section 48002.5 is added to the Food and Agricultural Code, to read:

48002.5. In addition to any other assessment, fees, or charges that may be required pursuant to Section 48002 or any other provision of this code, producers of navel oranges and Valencia oranges that are grown in this state and prepared for fresh market in the Counties of Fresno, Kern, Madera, Orange, Riverside, San Bernardino, Santa Clara, Tulare, and Ventura shall pay an assessment not to exceed 2 mills ($0.002) per carton. The assessment shall be:

(a) Based on the number of cartons shipped.

(b) Used to fund a program within the department to provide the industry with a state crop estimating service and an acreage survey.

(c) Collected from the producer, as defined in paragraph (4) of subdivision (a) of Section 48002, by the first handler.

(d) Remitted to the department by the first handler, along with an assessment form, at the end of each month during the marketing season.

(e) Deposited in a separate account in the Department of Food and Agriculture Fund.

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 fund, as soon as possible, a program to provide a state crop estimating service and acreage survey for growers of navel oranges and Valencia oranges, it is necessary that this act take effect immediately.

———

CHAPTER 508

An act to amend Section 128 of the Code of Civil Procedure, relating to judgments.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 128 of the Code of Civil Procedure is amended to read:

128. (a) Every court shall have the power to do all of the following:

(1) To preserve and enforce order in its immediate presence.

(2) To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.

(3) To provide for the orderly conduct of proceedings before it, or its officers.

(4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.

(5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.

(6) To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this code.

(7) To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.

(8) To amend and control its process and orders so as to make them conform to law and justice. An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following:

(A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal.

(B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.

(b) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting an attorney, his or her agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of any action or proceeding, the execution of any sentence shall be stayed pending the filing within three

judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt except for the conduct as may be proscribed by subdivision (b) of Section 6068 of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.

(c) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting a public safety employee acting within the scope of employment for reason of the employee's failure to comply with a duly issued subpoena or subpoena duces tecum, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "public safety employee" includes any peace officer, firefighter, paramedic, or any other employee of a public law enforcement agency whose duty is either to maintain official records or to analyze or present evidence for investigative or prosecutorial purposes.

(d) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting the victim of a sexual assault, where the contempt consists of refusing to testify concerning that sexual assault, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "sexual assault" means any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.

(e) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting the victim of domestic violence, where the contempt consists of refusing to testify concerning that domestic violence, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, the term "domestic violence" means "domestic violence" as defined in Section 6211 of the Family Code.

(f) Notwithstanding Section 1211 or any other provision of law, no order of contempt shall be made affecting a county government or any member of its governing body acting pursuant to its constitutional or statutory authority unless the court finds, based on a review of evidence presented at a hearing conducted for this purpose, that either of the following conditions exist:

(1) That the county has the resources necessary to comply with the order of the court.

(2) That the county has the authority, without recourse to voter approval or without incurring additional indebtedness, to generate

the additional resources necessary to comply with the order of the court, that compliance with the order of the court will not expose the county, any member of its governing body, or any other county officer to liability for failure to perform other constitutional or statutory duties, and that compliance with the order of the court will not deprive the county of resources necessary for its reasonable support and maintenance.

CHAPTER 509

An act to amend Sections 307 and 308 of, to repeal and add Section 305 of, and to amend, repeal, and add Section 309.1 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 305 of the Public Utilities Code is repealed.

SEC. 2. Section 305 is added to the Public Utilities Code, to read:

305. The Governor shall designate a president of the commission from among the members of the commission. The president shall direct the executive director, the attorney, and other staff of the commission, except for the staff of the division described in Section 309.5, in the performance of their duties, in accordance with commission policies and guidelines. The president shall preside at all meetings and sessions of the commission.

SEC. 3. Section 307 of the Public Utilities Code is amended to read:

307. (a) The commission may appoint as attorney to the commission an attorney at law of this state, who shall hold office during the pleasure of the commission.

(b) The attorney shall represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this part or under any order or act of the commission. If directed to do so by the president, except as otherwise directed by vote of the commission, the attorney shall intervene, if possible, in any action or proceeding in which any such question is involved.

(c) The attorney shall commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the president, except as otherwise directed or authorized by vote of the commission, advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof, and generally perform all duties and services as

attorney to the commission that the president, or vote of the commission, may require of him.

SEC. 4. Section 308 of the Public Utilities Code is amended to read:

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.

(b) The executive director shall keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of the commission, prescribes. The president may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county of this state.

SEC. 5. Section 309.1 of the Public Utilities Code is amended to read:

309.1. (a) The Governor may appoint up to two advisers for each member of the commission upon the request of the commission member. Each adviser shall receive a salary fixed by the commission with the approval of the Department of Personnel Administration. The commission shall seek funding for staffing in accordance with this section through the annual Budget Act. The total number of advisers exempt from civil service may not exceed 10.

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

SEC. 6. Section 309.1 is added to the Public Utilities Code, to read:

309.1. (a) The Governor may appoint one adviser for each member of the commission upon the request of the commission member. Each adviser shall receive a salary fixed by the commission with the approval of the Department of Personnel Administration. The total number of advisers exempt from civil service may not exceed five.

(b) This section shall become operative on January 1, 2003.

CHAPTER 510

An act to amend Sections 335, 337, 338, and 339 of, to add Section 341.5 to, and to repeal and add Section 359 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 335 of the Public Utilities Code is amended to read:

335. In order to ensure that the interests of the people of California are served, a five-member Electricity Oversight Board is hereby created as provided in Section 336. For purposes of this chapter, any reference to the Oversight Board shall mean the Electricity Oversight Board. Its functions shall be all of the following:

(a) To oversee the Independent System Operator and the Power Exchange.

(b) To determine the composition and terms of service and to exercise the exclusive right to decline to confirm the appointments of specific members of the governing boards of the Independent System Operator and the Power Exchange, as specified in subdivision (d).

(c) To serve as an appeal board for majority decisions of the Independent System Operator governing board, as they relate to matters subject to exclusive state jurisdiction, as specified in Section 339.

(d) Those members of the Independent System Operator and Power Exchange governing boards whose appointments the Oversight Board has the exclusive right to decline to confirm include proposed governing board members representing agricultural end-users, industrial end-users, commercial end-users, residential end-users, end-users at large, nonmarket participants, and public interest groups.

SEC. 2. Section 337 of the Public Utilities Code is amended to read:

337. The Oversight Board shall have the exclusive right to approve procedures for the election and submission for confirmation and the qualifications for Independent System Operator governing board members specified in subdivision (d) of Section 335, all of whom shall be required to be electricity consumers in the area served by the Independent System Operator. The Independent System Operator governing board shall include, but not be limited to, representatives of investor-owned utility transmission owners, publicly owned utility transmission owners, nonutility electricity sellers, public buyers and sellers, private buyers and sellers, industrial end-users, commercial end-users, residential end-users, agricultural end-users, public interest groups, and nonmarket participant representatives. A simple majority of the board shall consist of persons who are themselves unaffiliated with electric generation, transmission or distribution corporations. The structural composition of the Independent System Operator governing board existing on

July 1, 1999, shall remain in effect until an agreement with a participating state is legally in effect. However, prior to such an agreement, California shall retain the right to change the Independent System Operator governing board into a nonstakeholder board. In the event of such a legislative change, revised bylaws shall be filed with the Federal Energy Regulatory Commission under Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).

SEC. 3. Section 338 of the Public Utilities Code is amended to read:

338. The Oversight Board shall have the exclusive right to approve procedures and the qualifications for Power Exchange governing board members specified in subdivision (d) of Section 335, all of whom shall be required to be electricity customers in the area served by the Power Exchange. The Power Exchange governing board shall include, but not be limited to, representatives of investor-owned electric distribution companies, publicly owned electric distribution companies, nonutility generators, public buyers and sellers, private buyers and sellers, industrial end-users, commercial end-users, residential end-users, agricultural end-users, public interest groups, and nonmarket participant representatives. The structural composition of the Power Exchange governing board existing on July 1, 1999, shall remain in effect until an agreement with a participating state is legally in effect. However, prior to such an agreement, California shall retain the right to change the Power Exchange governing board into a nonstakeholder board. In the event of such a legislative change, revised bylaws shall be filed with the Federal Energy Regulatory Commission under Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).

SEC. 4. Section 339 of the Public Utilities Code is amended to read:

339. (a) The Oversight Board is the appeal board for majority decisions of the Independent System Operator governing board relating to matters that are identified in subdivision (b) as they pertain to the Independent System Operator.

(b) The following matters are subject to California's exclusive jurisdiction:

(1) Selections by California of governing board members, as described in Sections 335, 337, and 338.

(2) Matters pertaining to retail electric service or retail sales of electric energy.

(3) Ensuring that the purposes and functions of the Independent System Operator and Power Exchange are consistent with the purposes and functions of California nonprofit public benefit corporations, including duties of care and conflict of interest standards for directors of the corporations.

(4) State functions assigned to the Independent System Operator and Power Exchange under state law.

(5) Open meeting standards and meeting notice requirements.

(6) Appointment of advisory representatives representing state interests.

(7) Public access to corporate records.

(8) The amendment of bylaws relevant to these matters.

(c) Only members of the Independent System Operator governing board may appeal a majority decision of the Independent System Operator related to any of the matters specified in subdivision (b) to the Oversight Board.

SEC. 5. Section 341.5 is added to the Public Utilities Code, to read:

341.5. (a) The Independent System Operator and Power Exchange bylaws shall contain provisions that identify those matters specified in subdivision (b) of Section 339 as matters within state jurisdiction. The bylaws shall also contain provisions which state that California's bylaws approval function with respect to the matters specified in subdivision (b) of Section 339 shall not preclude the Federal Energy Regulatory Commission from taking any action necessary to address undue discrimination or other violations of the Federal Power Act (16 U.S.C.A. Sec. 791a et seq.) or to exercise any other commission responsibility under the Federal Power Act. In taking any such action, the Federal Energy Regulatory Commission shall give due respect to California's jurisdictional interests in the functions of the Independent System Operator and Power Exchange and to attempt to accommodate state interests to the extent those interests are not inconsistent with the Federal Energy Regulatory Commission's statutory responsibilities. The bylaws shall state that any future agreement regarding the apportionment of the Independent System Operator and Power Exchange board appointment function among participating states associated with the expansion of the Independent System Operator and Power Exchange into multistate entities shall be filed with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).

(b) Any necessary bylaw changes to implement the provisions of Section 335, 337, 338, 339, or subdivision (a) of this section, or changes required pursuant to an agreement as contemplated by subdivision (a) of this section with a participating state for a regional organization, shall be effective upon approval of the respective governing boards and the Oversight Board and acceptance for filing by the Federal Energy Regulatory Commission.

SEC. 6. Section 359 of the Public Utilities Code is repealed.

SEC. 7. Section 359 is added to the Public Utilities Code, to read:

359. (a) It is the intent of the Legislature to provide for the evolution of the Independent System Operator and the Power Exchange into regional organizations to promote the development of regional electricity transmission markets in the western states and to improve the access of consumers served by the Independent System Operator and the Power Exchange to those markets.

(b) The preferred means by which the voluntary evolution described in subdivision (a) should occur is through the adoption of a regional compact or other comparable agreement among cooperating party states, the retail customers of which states would reside within the geographic territories served by the Independent System Operator and the Power Exchange.

(c) The agreement described in subdivision (b) should provide for all of the following:

(1) An equitable process for the appointment or confirmation by party states of members of the governing boards of the Independent System Operator and the Power Exchange.

(2) A respecification of the size, structure, representation, eligible membership, nominating procedures, and member terms of service of the governing boards of the Independent System Operator and the Power Exchange.

(3) Mechanisms by which each party state, jointly or separately, can oversee effectively the actions of the Independent System Operator and the Power Exchange as those actions relate to the assurance of electricity system reliability within the party state and to matters that affect electricity sales to the retail customers of the party state or otherwise affect the general welfare of the electricity consumers and the general public of the party state.

(4) The adherence by publicly owned and investor-owned utilities located in party states to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.

CHAPTER 511

An act to add Section 79.2 to the Military and Veterans Code, relating to veterans.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 79.2 is added to the Military and Veterans Code, to read:

79.2. (a) In addition to the secretary, the Governor shall appoint a Deputy Secretary of Veterans Homes, to serve at the pleasure of the secretary, who shall be responsible for the administration of all sites of the California veterans homes.

(b) It is preferable that the deputy secretary is a medical doctor who holds a valid, unrevoked, and unsuspended license to practice medicine in this state, or is a professionally trained hospital

administrator with (1) experience in managing a multihospital organization and (2) training or experience in the care of the elderly.

(c) The role of the deputy secretary shall be to oversee and monitor all aspects of medical care that is being provided to men and women veterans who are residents in any California veterans home.

CHAPTER 512

An act to amend Section 7159.2 of the Business and Professions Code, and to amend Section 1804.1 of the Civil Code, relating to home improvement contracts.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 7159.2 of the Business and Professions Code is amended to read:

7159.2. (a) No home improvement goods or services contract of a value of five thousand dollars ($5,000) or less shall provide for a security interest in real property, except for a mechanic's lien or other interest in property that arises by operation of law. Any lien in violation of this subdivision is void and unenforceable.

(b) When the proceeds of a loan secured by a mortgage on real property are used to fund goods or services pursuant to a home improvement goods or services contract of more than five thousand dollars ($5,000), the person or entity making the loan shall only pay a contractor under the home improvement goods or services contract from the proceeds of the loan by either of the following methods:

(1) By an instrument payable to the borrower or jointly to the borrower and the contractor.

(2) At the election of the borrower, through a third-party escrow agent pursuant to the terms of a written agreement signed by the borrower, the person or entity making the loan, and the contractor prior to the disbursement.

(c) Any person or entity who violates any provision of this section shall be liable for actual damages suffered by the borrower for damages that proximately result from the violation.

(d) Any person or entity who intentionally or as a pattern or practice violates any provision of this section shall be additionally liable for three times the contract price for the home improvement.

(e) Any person who is a senior citizen or disabled person, as defined in subdivisions (f) and (g) of Section 1761 of the Civil Code, as part of any action for a violation of this section, may seek and be awarded, in addition to the remedies provided in this section, up to

five thousand dollars ($5,000) as provided in subdivision (b) of Section 1780 of the Civil Code.

(f) The court shall award court costs and attorney's fees to a prevailing plaintiff in an action brought 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. 2. Section 1804.1 of the Civil Code is amended to read:

1804.1. No contract or obligation shall contain any provision by which:

(a) The buyer agrees not to assert against a seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense other than as provided in Section 1804.2.

(b) In the absence of the buyer's default in the performance of any of his or her obligations, the holder may accelerate the maturity of any part or all of the amount owing thereunder.

(c) A power of attorney is given to confess judgment in this state, or an assignment of wages is given; provided, that nothing herein contained shall prohibit the giving of an assignment of wages contained in a separate instrument, executed pursuant to Section 300 of the Labor Code.

(d) The seller or holder of the contract or other person acting on his or her behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods.

(e) The buyer waives any right of action against the seller or holder of the contract or other person acting on his or her behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of goods.

(f) The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his or her behalf, as the buyer's agent in collection of payments under the contract or in the repossession of goods.

(g) The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith.

(h) The buyer agrees to the payment of any charge by reason of the exercise of his or her right to rescind or void the contract.

(i) The seller or holder of the contract is given the right to commence an action on a contract under the provisions of this chapter in a county other than the county in which the contract was in fact signed by the buyer, the county in which the buyer resides at the commencement of the action, the county in which the buyer resided at the time that the contract was entered into, 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 such real property.

(j) The seller takes a security interest, other than a mechanics' lien, in the buyer's real property which is the buyer's primary residence where the buyer is a person who is 65 years of age or older and the contract is for a home improvement, as defined in Section 7151.2 of the Business and Professions Code.

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.

CHAPTER 513

An act to add and repeal Section 205 of the Financial Code, relating to banking.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 205 is added to the Financial Code, to read:

205. (a) This section shall be known as and may be cited as the "California Consumers Y2K Financial Protection Act."

(b) For purposes of this section, the following definitions shall apply:

(1) "Consumer" means any natural individual.

(2) "Financial institution" means any person or business that is subject to regulation by the department.

(3) "Year 2000 Problem" shall have the meaning specified in subdivision (a) of Section 3269 of the Civil Code.

(4) "Financial institution's Year 2000 Problem" means a Year 2000 Problem caused solely by the failure of a financial institution's internal computer system, including, but not limited to, the financial institution's proprietary software applications and other internal computing applications. A Year 2000 Problem is not a "financial institution's Year 2000 Problem" if information technology used by a consumer fails to properly exchange data with the financial institution's internal computer system due to a Year 2000 Problem, unless the information technology used is supplied by or supported by resources from the financial institution for the express purpose of interacting with the financial institution's customers.

(c) If a financial institution's Year 2000 Problem results in a consumer being subject to any fee, charge, or penalty assessed by the financial institution, the financial institution shall not impose the fee, charge, or penalty.

(d) If a financial institution's Year 2000 Problem directly results in a consumer being charged any fee, charge, or penalty by a third party due solely to the financial institution's Year 2000 Problem, the financial institution shall reimburse the consumer for the fee, charge, or penalty upon the consumer providing the financial institution with written evidence of the fee, charge, or penalty.

(e) The department shall enforce the provisions of this section.

(f) This section shall not apply to those transactions that occur prior to the disruption of financial or data transfer operations by a Year 2000 Problem.

(g) A financial institution's liability under this section shall be limited to the extent that the financial institution's Year 2000 Problem contributed to the fee, charge, or penalty.

(h) This section is not intended to supersede any other state or federal law or regulation in effect on January 1, 2000. If a financial institution's obligation to refrain from imposing, to reimburse, or to resolve a dispute regarding, a fee, charge, or penalty is already addressed by another law or regulation, then the provisions of that law or regulation shall apply. The purpose of this section is to establish a safety net for consumers to the extent that existing federal and state laws and regulations do not already provide for the resolution of errors in assessing those fees, charges, or penalties.

(i) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

CHAPTER 514

An act to add Section 1010.6 to the Code of Civil Procedure, and to amend Section 6159 of the Government Code, relating to civil procedure.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 1010.6 is added to the Code of Civil Procedure, to read:

1010.6. (a) A trial court may adopt local rules permitting electronic filing and service of documents, subject to rules adopted pursuant to subdivision (b) and the following conditions:

(1) A document that is filed electronically shall have the same legal effect as an original paper document.

(2) (A) When a document to be filed requires the signature, not under penalty of perjury, of an attorney or a person filing in propia persona, the document shall be deemed to have been signed by that attorney or person if filed electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if, prior to filing, a printed form of the document has been signed by that person. The attorney or person filing the document represents, by the act of filing, that the declarant has signed the document. The attorney or person filing the document shall maintain the printed form of the document bearing the original signature and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

(3) Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier.

(4) The court receiving a document filed electronically shall issue a confirmation that the document has been received and filed. The confirmation shall serve as proof that the document has been filed.

(5) Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court may electronically transmit a summons with the court seal and the case number to the party filing the complaint. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an original summons. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately upon receipt of the complaint notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint.

(6) Where notice may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the notice and any accompanying documents may be authorized when a party has agreed to accept service electronically in that action. Electronic service is complete at the time of transmission, but any period of notice or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic transmission by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by any other statute or rule of court.

(7) The court shall permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, as part of the process involving the electronic filing of a document. The court shall consider and determine the application in accordance with Section 68511.3 of the Government Code and shall not require the party or attorney to submit any documentation other than that set forth in Section 68511.3 of the Government Code. Nothing in this section shall require the court to waive a filing fee that is not otherwise waivable.

(8) If a trial court adopts rules conforming to paragraphs (1) to (7), inclusive, it may provide by order that all parties to an action file documents electronically in a class action, a consolidated action, or a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court's order does not cause undue hardship or significant prejudice to any party in the action.

(b) By January 1, 2003, the Judicial Council shall adopt uniform rules for the electronic filing and service of documents in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, and access to public records. These rules shall conform to the conditions set forth in this section, as amended from time to time.

SEC. 2. Section 6159 of the Government Code is amended to read:

6159. (a) As used in this section:

(1) "Credit card" means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) "Card issuer" means any person, or his or her agent, who issues a credit card and purchases credit card drafts.

(3) "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) "Draft purchaser" means any person who purchases credit card drafts.

(b) Subject to subdivision (c), a court, city, county, city and county, or other public agency may authorize the acceptance of a credit card for any of the following:

(1) The payment for the deposit of bail or for any fine for any offense not declared to be a felony.

(2) The payment of a filing fee or other court fee.

(3) The payment of any towage or storage costs for a vehicle that has been removed from a highway, or from public or private property, as a result of parking violations.

(4) The payment of child, family, or spousal support, including reimbursement of public assistance, related fees, costs, or penalties, with the authorization of the cardholder.

(5) The payment for services rendered by any city, county, city and county, or other public agency.

(6) The payment of any fee, charge, or tax due a city, county, city and county, or other public agency.

(c) A court desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of the Judicial Council. A city desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of the governing body that has fiscal responsibility for that agency. After approval is obtained, a contract may be executed with one or more credit card issuers or draft purchasers. The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer or draft purchaser regarding the presentment, acceptability, and payment of credit card drafts.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer or draft purchaser of a reasonable fee or discount.

(4) Any other matters appropriately included in contracts with respect to the purchase of credit card drafts as may be agreed upon by the parties to the contract.

(d) The honoring of a credit card pursuant to subdivision (b) hereof constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit card is honored, provided the credit card draft is paid following its due presentment to a card issuer or draft purchaser.

(e) If any credit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit card shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder shall continue as an outstanding obligation as if no payment had been attempted.

(f) Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, a court, city, county, city and county, or any other public agency may impose a fee for the use of a credit card, not to exceed the costs incurred by the agency in providing for payment by credit card. These costs may include, but shall not be limited to, the payment of fees or discounts as specified in paragraph (3) of subdivision (c). Any fee imposed by a court pursuant to this subdivision shall be approved by the Judicial Council.

Any fee imposed by any other public agency pursuant to this subdivision for the use of a credit card shall be approved by the governing body responsible for the fiscal decisions of the public agency.

(g) Fees or discounts provided for under paragraph (3) of subdivision (c) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer or draft purchaser to the extent not recovered from the cardholder pursuant to subdivision (f).

(h) The Judicial Council may enter into a master agreement with one or more credit card issuers or draft purchasers for the acceptance and payment of credit card drafts received by the courts. Any court may join in any of these master agreements or may enter into a separate agreement with a credit card issuer or draft purchaser.

SEC. 3. It is the intent of the Legislature in enacting this act to do both of the following:

(a) To provide for the eventual standardization of electronic filing and service procedures on a statewide level.

(b) To provide that a court shall not adopt an electronic filing procedure that requires a litigant or attorney to possess specialized, cumbersome, or expensive equipment or software to utilize the electronic filing system.

CHAPTER 515

An act to add and repeal Section 15330.05 of the Government Code, relating to commerce.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 15330.05 is added to the Government Code, to read:

15330.05. (a) The agency, in consultation with the Ports of Long Beach and Los Angeles, the Southern California Association of Governments, the San Bernardino Associated Governments, the Federal Maritime Administration, and representatives from the railroad industry, the private sector, colleges and universities, and other interested parties, including, but not limited to, agencies and organizations from San Bernardino, Riverside, and Los Angeles Counties, shall study the efficiency and economic benefits of establishing an Inland Empire Distribution Center, as compared to the distribution system that is currently in existence in the Inland Empire, and quantify any efficiencies and economic benefits that would result from establishing that new distribution center. The

study may include, but need not be limited to, an examination of the need for increasing capacity through grade separations, highway and road improvements, and other improvements.

(b) Notwithstanding Section 7550.5 of the Government Code, the agency shall prepare and submit to the Legislature, not later than July 1, 2001, a report detailing the findings made under the study required under subdivision (a).

(c) The agency may promulgate a request for proposals for completion of the study and report required under subdivisions (a) and (b) by one or more entities that are experts in the area and submit the resulting report in satisfaction of the requirement imposed under subdivision (b). The request for proposals shall require any entity awarded the grant to provide funds to match, on a dollar-for-dollar basis, the amount provided under the grant.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2002, deletes or extends that date.

CHAPTER 516

An act to amend Section 15399.21 of the Government Code, relating to underground storage tanks.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 15399.21 of the Government Code is amended to read:

15399.21. This chapter is repealed as of January 1, 2002, unless a later enacted statute that is enacted on or before January 1, 2002, deletes or extends that date.

CHAPTER 517

An act to amend Sections 1102, 1102.1, 1102.2, and 1102.9 of, and to add Sections 798.75.5, 1102.3a and 1102.6d to, the Civil Code, and to amend Sections 18025 and 18046 of the Health and Safety Code, relating to mobilehomes and manufactured homes.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 798.75.5 is added to the Civil Code, to read:

798.75.5. (a) The management shall provide a prospective homeowner with a completed written disclosure form concerning the park described in subdivision (b) at least three days prior to execution of a rental agreement or statement signed by the park management and the prospective homeowner that the parties have agreed to the terms and conditions of the rental agreement. The management shall update the information on the disclosure form annually, or, in the event of a material change in the condition of the mobilehome park, at the time of the material change in that condition.

(b) The written disclosure form shall read as follows:

Mobilehome Park Rental Agreement Disclosure Form

THIS DISCLOSURE STATEMENT CONCERNS THE MOBILEHOME PARK KNOWN AS

_____ LOCATED AT _____
park name park address

IN THE CITY OF_____ COUNTY OF _____
STATE OF CALIFORNIA.
THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE PARK AND PARK COMMON AREAS AS OF _____ IN COMPLIANCE WITH SECTION 798.75.5 OF THE CIVIL CODE.
date

IT IS NOT A WARRANTY OF ANY KIND BY THE MOBILEHOME PARK OWNER OR PARK MANAGEMENT AND IS NOT A SUBSTITUTE FOR ANY INSPECTION BY THE PROSPECTIVE HOMEOWNER/LESSEE OF THE SPACE TO BE RENTED OR LEASED OR OF THE PARK, INCLUDING ALL COMMON AREAS REFERENCED IN THIS STATEMENT. THIS STATEMENT DOES NOT CREATE ANY NEW DUTY OR NEW LIABILITY ON THE PART OF THE MOBILEHOME PARK OWNER OR MOBILEHOME PARK MANAGEMENT OR AFFECT ANY DUTIES THAT MAY HAVE EXISTED PRIOR TO THE ENACTMENT OF SECTION 798.75.5 OF THE CIVIL CODE, OTHER THAN THE DUTY TO DISCLOSE THE INFORMATION REQUIRED BY THE STATEMENT.

Are you (the mobilehome park owner/mobilehome park manager) aware of any of the following:

A. Park or common area facilities	B. Does the park contain this facility?		C. Is the facility in operation?		D. Does the facility have any known substantial defects?		E. Are there any uncorrected park citations or notices of abatement relating to the facilities issued by a public agency?		F. Is there any substantial, uncorrected damage to the facility from fire, flood, earthquake, or landslides?		G. Are there any pending lawsuits by or against the park affecting the facilities or alleging defects in the facilities?		H. Is there any encroachment, easement, non-conforming use, or violation of setback requirements regarding this park common area facility?	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Clubhouse														
Walkways														
Streets, roads, and access														
Electric utility system														
Water utility system														
Gas utility system														
Common area lighting system														
Septic or sewer system														
Playground														
RV storage														
Parking areas														
Swimming pool														
Spa pool														
Laundry														
Other common area facilities*														

*If there are other important park or common area facilities, please specify (attach additional sheets if necessary):

_____

_____

If any item in C is checked "no", or any item in D, E, F, G, or H is checked "yes", please explain (attach additional sheets if necessary):_____

The mobilehome park owner/park manager states that the information herein has been delivered to the prospective homeowner/lessee a minimum of three days prior to execution of a rental agreement and is true and correct to the best of the park owner/park manager's knowledge as of the date signed by the park owner/manager.

Park Owner/Manager: _____ By: _____ Date: _____
print name signature

I/WE ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THE PARK OWNER/MANAGER STATEMENT.

Prospective Homeowner
Lessee _____ Park Owner/Manager _____ _____
Title
Date: _____

Prospective Homeowner
Lessee _____ Park Owner/Manager _____ _____
Title
Date: _____

SEC. 2. Section 1102 of the Civil Code is amended to read:

1102. (a) Except as provided in Section 1102.2, this article applies to any transfer by sale, exchange, installment land sale contract, as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

(b) Except as provided in Section 1102.2, this article shall apply to a resale transaction entered into on or after January 1, 2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, which manufactured home or mobilehome is classified as personal property and intended for use as a residence.

(c) Any waiver of the requirements of this article is void as against public policy.

SEC. 3. Section 1102.1 of the Civil Code is amended to read:

1102.1. (a) In enacting Chapter 817 of the Statutes of 1994, it was the intent of the Legislature to clarify and facilitate the use of the real estate disclosure statement, as specified in Section 1102.6. The Legislature intended the statement to be used by transferors making disclosures required under this article and by agents making disclosures required by Section 2079 on the agent's portion of the real estate disclosure statement, in transfers subject to this article. In transfers not subject to this article, agents may make required disclosures in a separate writing. The Legislature did not intend to affect the existing obligations of the parties to a real estate contract, or their agents, to disclose any fact materially affecting the value and desirability of the property, including, but not limited to, the physical conditions of the property and previously received reports of physical inspections noted on the disclosure form set forth in Section 1102.6 or 1102.6a, and that nothing in this article shall be construed to change the duty of a real estate broker or salesperson pursuant to Section 2079.

It is also the intent of the Legislature that the delivery of a real estate transfer disclosure statement may not be waived in an "as is" sale, as held in Loughrin v. Superior Court (1993) 15 Cal. App. 4th 1188.

(b) In enacting Chapter 677 of the Statutes of 1996, it was the intent of the Legislature to clarify and facilitate the use of the manufactured home and mobilehome transfer disclosure statement applicable to the resale of a manufactured home or mobilehome pursuant to subdivision (b) of Section 1102. The Legislature intended the statements to be used by transferors making disclosures required under this article and by agents making disclosures required by Section 2079 on the agent's portion of the disclosure statement and as required by Section 18046 of the Health and Safety Code on the dealer's portion of the manufactured home and mobilehome transfer disclosure statement, in transfers subject to this article. In transfers

not subject to this article, agents may make required disclosures in a separate writing. The Legislature did not intend to affect the existing obligations of the parties to a real estate contract, or their agents, to disclose any fact materially affecting the value and desirability of the property, including, but not limited to, the physical conditions of the property and previously received reports of physical inspections noted on the disclosure form set forth in Section 1102.6 or 1102.6a or to affect the existing obligations of the parties to a manufactured home or mobilehome purchase contract, and nothing in this article shall be construed to change the duty of a real estate broker or salesperson pursuant to Section 2079 or the duty of a manufactured home or mobilehome dealer or salesperson pursuant to Section 18046 of the Health and Safety Code.

It is also the intent of the Legislature that the delivery of a mobilehome transfer disclosure statement may not be waived in an "as is" sale.

(c) It is the intent of the Legislature that manufactured home and mobilehome dealers and salespersons and real estate brokers and salespersons use the form provided pursuant to Section 1102.6d. It is also the intent of the Legislature for sellers of manufactured homes or mobilehomes who are neither manufactured home dealers or salespersons nor real estate brokers or salespersons to use the Manufactured Home/Mobilehome Transfer Disclosure Statement contained in Section 1102.6d.

SEC. 4. Section 1102.2 of the Civil Code is amended to read:

1102.2. This article does not apply to the following:

(a) Transfers which are required to be preceded by the furnishing to a prospective transferee of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code and transfers which can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code.

(b) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(c) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to

a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure, transfers to the legal owner or lienholder of a manufactured home or mobilehome by a registered owner or successor in interest who is in default, or transfers by reason of any foreclosure of a security interest in a manufactured home or mobilehome.

(d) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(e) Transfers from one coowner to one or more other coowners.

(f) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(g) Transfers between spouses resulting from a judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to that judgment.

(h) Transfers by the Controller in the course of administering Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(i) Transfers under Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(j) Transfers or exchanges to or from any governmental entity.

SEC. 4.5. Section 1102.2 of the Civil Code is amended to read:

1102.2. This article does not apply to the following:

(a) Transfers which are required to be preceded by the furnishing to a prospective transferee of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code and transfers which can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code.

(b) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(c) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure, transfers to the legal owner or lienholder of a manufactured home or mobilehome by a registered owner of

successor in interest who is in default, or transfers by reason of any foreclosure of a security interest in a manufactured home or mobilehome.

(d) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust. This exemption shall not apply to a transfer if the trustee is a natural person who is sole trustee of a revocable trust and he or she is a former owner of the property or an occupant in possession of the property within the preceding year.

(e) Transfers from one coowner to one or more other coowners.

(f) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(g) Transfers between spouses resulting from a judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to that judgment.

(h) Transfers by the Controller in the course of administering Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(i) Transfers under Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(j) Transfers or exchanges to or from any governmental entity.

SEC. 5. Section 1102.3a is added to the Civil Code, to read:

1102.3a. (a) The transferor of any manufactured home or mobilehome subject to this article shall deliver to the prospective transferee the written statement required by this article, as follows:

(1) In the case of a sale, or a lease with an option to purchase, of a manufactured home or mobilehome, involving an agent, as defined in Section 18046 of the Health and Safety Code, as soon as practicable, but no later than the close of escrow for the purchase of the manufactured home or mobilehome.

(2) In the case of a sale, or lease with an option to purchase, of a manufactured home or mobilehome, not involving an agent, as defined in Section 18046 of the Health and Safety Code, at the time of execution of any document by the prospective transferee with the transferor for the purchase of the manufactured home or mobilehome.

(b) With respect to any transfer subject to this section, the transferor shall indicate compliance with this article either on the transfer disclosure statement, any addendum thereto, or on a separate document.

(c) If any disclosure, or any material amendment of any disclosure, required to be made pursuant to subdivision (b) of Section 1102, is delivered after the execution of an offer to purchase, the transferee shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor.

SEC. 6. Section 1102.6d is added to the Civil Code, to read:

1102.6d. Except for manufactured homes and mobilehomes located in a common interest development governed by Title 6 (commencing with Section 1351), the disclosures applicable to the resale of a manufactured home or mobilehome pursuant to subdivision (b) of Section 1102 are set forth in, and shall be made on a copy of, the following disclosure form:

MANUFACTURED HOME AND MOBILEHOME:
TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE MANUFACTURED HOME OR MOBILEHOME (HEREAFTER REFERRED TO AS "HOME") LOCATED AT _____ IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS

YEAR	MAKE	SERIAL #(s)	HCD DECAL # or Equivalent

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED HOME IN COMPLIANCE WITH SUBDIVISION (b) OF SECTION 1102 OF THE CIVIL CODE AND SECTIONS 18025 AND 18046 OF THE HEALTH AND SAFETY CODE AS OF _____
DATE

IT IS NOT A WARRANTY OF ANY KIND BY THE LAWFUL OWNER OF THE MANUFACTURED HOME OR MOBILEHOME WHO OFFERS THE HOME FOR SALE (HEREAFTER THE SELLER), OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN. AN "AGENT" MEANS ANY DEALER OR SALESPERSON LICENSED PURSUANT TO PART 2 (COMMENCING WITH SECTION 18000) OF THE HEALTH AND SAFETY CODE, OR A REAL ESTATE BROKER OR SALESPERSON LICENSED PURSUANT TO DIVISION 4 (COMMENCING WITH SECTION 10000) OF DIVISION 13 OF THE BUSINESS AND PROFESSIONS CODE.

I

COORDINATION WITH OTHER DISCLOSURES & INFORMATION

This Manufactured Home and Mobilehome Transfer Disclosure Statement is made pursuant to Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code. Other statutes require disclosures, or other information may be important to the prospective buyer, depending upon the details of the particular transaction (including, but not limited to, the condition of the park in which the manufactured home or mobilehome will be located; disclosures required or information provided by the Mobilehome Residency Law, Section 798 of the Civil Code et seq.; the mobilehome park rental agreement or lease; the mobilehome park rules and regulations; and park and lot inspection reports, if any, completed by the state or a local enforcement agency). Substituted Disclosures: The following disclosures have or will be made in connection with this transfer, and are intended to satisfy the disclosure obligations of this form, where the subject matter is the same:

☐ Home inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures: _____

_____

II

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective buyers may rely on this information in deciding whether, and on what terms, to purchase the subject Home. Seller hereby authorizes any agent(s), as defined in Section 18046 of the Health and Safety Code, representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the Home.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY, AS DEFINED IN SECTION 18046 OF THE HEALTH AND SAFETY CODE. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND THE SELLER.

Seller___is___is not occupying the Home.

A. The subject Home includes the items checked below which are being sold with the Home (read across):

___Range	___Oven	___Microwave
___Dishwasher	___Trash Compactor	___Garbage Disposal
___Burglar Alarm	___Smoke Detectors	___Fire Alarm
___TV Antenna	___Satellite Dish	___Intercom
___Central Heating	___Central Air Cndtng.	___Wall/Window Air Cndtng.
___Evaporative Cooler(s)	___Sump Pump	___Water Softener
___Porch Decking	___Porch Awning	___Gazebo
___Private Sauna	___Private Spa	___Spa Locking Safety Cvr *
___Private Hot Tub	___Hot Tub Locking Cvr *	___Gas/Spa Heater
___Solar/Spa Heater	___Gas Water Heater	___Solar Water Heater
___Electric Water Heater	___Water Htr Anchored, Braced or Strapped *	___Bottled Propane
___Carport Awning		
___Automatic Garage Door Opener(s) *	___Attached Garage	___Detached Garage
	___# Remote Controls	___Window Screens
___Window Secure Bars	___Bedroom Window Quick Release Mechanism *	
___Earthquake Resistant Bracing System	___Washer/Dryer Hookups	___Rain Gutters

Exhaust Fan(s) in _____ 220 Volt Wiring in _____
Fireplace(s) in _____ Gas Starter(s) _____
Roof(s) and type(s) _____ Roof age (Approximate) _____
Other _____

* If there is an automatic garage door opener or safety cover listed above, it may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of the Health and Safety Code. The water heater may not be anchored, braced, strapped or secured in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code.

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ___ Yes ___ No. If yes, then describe. (Attach additional sheets if necessary):

_____

_____

B. Are you (the Seller) aware of any significant defects/malfunctions in any of the following in connection with the Home?

___Yes ___No If yes, check appropriate space(s) below:

___Interior Walls, ___Ceilings, ___Floors, ___Exterior Walls, ___Insulation,
___Roof(s), ___Windows, ___Doors, ___Home Electrical Systems, ___Plumbing,
___Porch or Deck, ___Porch Steps & Railings, ___Other Steps & Railings,
___Porch Awning, ___Carport Awning, ___Other Awnings, ___Skirting,
___Home Foundation or Support System, ___Other Structural Components (Describe: _____

_____

_____)

If any of the above is checked, explain. (Attach additional sheets if necessary): _____

_____

_____

C. Are you (the Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard, such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, or chemical storage tanks on the subject home interior or exterior..... ___ Yes ___ No
2. Room additions, structural modifications, or other alterations or repairs made without necessary permits..... ___ Yes ___ No
3. Room additions, structural modifications, or other alterations or repairs not in compliance with applicable codes ..... ___ Yes ___ No
4. Any settling from slippage, sliding or problems with leveling of the home or the foundation or support system..... ___ Yes ___ No
5. Drainage or grading problems with the home, space or lot..... ___ Yes ___ No
6. Damage to the home or accessory structures being sold with the home from fire, flood, earthquake, or landslides ..... ___ Yes ___ No
7. Any notices of abatement or citations against the home or accessory structures being sold with the home ..... ___ Yes ___ No
8. Any lawsuits by or against the seller threatening to or affecting the home or the accessory structures being sold with the home, including any lawsuits alleging any defect or deficiency in the home or accessories sold with the home..... ___ Yes ___ No
9. Neighborhood noise problems or other nuisances ..... ___ Yes ___ No
10. Any encroachment, easement, nonconforming use or violation of setback requirements with the home, accessory structures being sold with the home, or space ..... ___ Yes ___ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

_____

_____

_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

III

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an Agent in this transaction)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE HOME AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE HOME IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____
_____
_____
_____

Agent
Representing Seller _____ By _____ Date _____
(Please Print) (Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Agent who has obtained the offer is other than the Agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE HOME, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____
_____
_____
_____

Agent
Representing Buyer _____ By _____ Date _____
(Please Print) (Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE HOME AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THE BUYER(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Agent
Representing Seller _____ By _____ Date _____
(Please Print) (Signature)

Agent
Representing Buyer _____ By _____ Date _____
(Please Print) (Signature)

VI

SECTION 1102.3a OF THE CIVIL CODE PROVIDES A PROSPECTIVE BUYER WITH THE RIGHT TO RESCIND THE PURCHASE OF THE MANUFACTURED HOME OR MOBILEHOME FOR AT LEAST THREE DAYS AFTER DELIVERY OF THIS DISCLOSURE, IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A MANUFACTURED HOME OR MOBILEHOME DEALER OR A REAL ESTATE BROKER IS QUALIFIED TO PROVIDE ADVICE ON THE SALE OF A MANUFACTURED HOME OR MOBILEHOME. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

SEC. 7. Section 1102.9 of the Civil Code is amended to read:

1102.9. Any disclosure made pursuant to this article may be amended in writing by the transferor or his or her agent, but the amendment shall be subject to Section 1102.3 or 1102.3a.

SEC. 8. Section 18025 of the Health and Safety Code is amended to read:

18025. (a) Except as provided in subdivisions (b) and (c), it is unlawful for any person to sell, offer for sale, rent, or lease within this state, any manufactured home or any mobilehome, commercial coach, or special purpose commercial coach manufactured after September 1, 1958, containing structural, fire safety, plumbing, heat-producing, or electrical systems and equipment unless the systems and equipment meet the requirements of the department for those systems and that equipment and the installation of those systems and that equipment. The department may adopt rules and regulations that are reasonably consistent with recognized and accepted principles for structural, fire safety, plumbing, heat-producing, and electrical systems and equipment and installations, respectively, to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe structural, fire safety, plumbing, heat-producing, and electrical systems, equipment and installations.

(b) All manufactured homes and mobilehomes manufactured on or after June 15, 1976, shall comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.).

(c) The sale of used manufactured homes and mobilehomes by an agent licensed pursuant to this part shall be subject to Section 18046.

SEC. 9. Section 18046 of the Health and Safety Code is amended to read:

18046. (a) An "agent" for purposes of this section and Section 18025, means a dealer or salesperson licensed pursuant to this part, or a real estate broker or salesperson licensed pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code.

(b) A "seller" for the purposes of this section and Section 18025 means the lawful owner of the manufactured home or mobilehome offering the home for sale. For purposes of this section and Section 18025, the exemptions enumerated by Section 1102.2 of the Civil Code shall be applicable to the transfer of a manufactured home or mobilehome.

(c) The sale of used manufactured homes or mobilehomes by a real estate broker or salesperson licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code shall be subject to Section 2079 of the Civil Code.

(d) It is the duty of a dealer or salesperson, licensed under this chapter, to a prospective buyer of a used manufactured home or mobile home, subject to registration pursuant to this part, to conduct

a reasonably competent and diligent visual inspection of the home offered for sale and to disclose to that prospective buyer all facts materially affecting the value or desirability of the home that an investigation would reveal, if that dealer or salesperson has a written contract with the seller to find or obtain a buyer or is a dealer or salesperson who acts in cooperation with others to find and obtain a buyer. Where a transfer disclosure statement is required pursuant to subdivision (b) of Section 1102 of the Civil Code, a dealer or salesperson shall discharge that duty by completing the agent's portion of the transfer disclosure statement that a seller prepares and delivers to a prospective buyer pursuant to subdivision (b) of Section 1102 of the Civil Code. If no transfer disclosure statement is required, but the transaction is not exempt under Section 1102.2 of the Civil Code, a dealer shall discharge that duty by completing and delivering to the prospective buyer an exact reproduction of Sections III, IV, and V of the transfer disclosure statement required pursuant to subdivision (b) of Section 1102 of the Civil Code.

SEC. 10. Section 4.5 of this bill incorporates amendments to Section 1102.2 of the Civil Code proposed by both this bill and AB 594. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 1102.2 of the Civil Code, and (3) this bill is enacted after AB 594, in which case Section 4 of this bill shall not become operative.

CHAPTER 518

An act to amend Sections 451.5 and 457.1 of the Penal Code, relating to arson.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 451.5 of the Penal Code is amended to read:

451.5. (a) Any person who willfully, maliciously, deliberately, with premeditation, and with intent to cause injury to one or more persons or to cause damage to property under circumstances likely to produce injury to one or more persons or to cause damage to one or more structures or inhabited dwellings, sets fire to, burns, or causes to be burned, or aids, counsels, or procures the burning of any residence, structure, forest land, or property is guilty of aggravated arson if one or more of the following aggravating factors exists:

(1) The defendant has been previously convicted of arson on one or more occasions within the past 10 years.

(2) (A) The fire caused property damage and other losses in excess of five million dollars ($5,000,000).

(B) In calculating the total amount of property damage and other losses under subparagraph (A), the court shall consider the cost of fire suppression. It is the intent of the Legislature that this paragraph be reviewed within five years to consider the effects of inflation on the dollar amount stated herein. For that reason, this paragraph 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.

(3) The fire caused damage to, or the destruction of, five or more inhabited structures.

(b) Any person who is convicted under subdivision (a) shall be punished by imprisonment in the state prison for 10 years to life.

(c) Any person who is sentenced under subdivision (b) shall not be eligible for release on parole until 10 calendar years have elapsed.

SEC. 2. Section 457.1 of the Penal Code is amended to read:

457.1. (a) As used in this section, "arson" means a violation of Section 451, 451.5, or 453, and attempted arson, which includes, but is not limited to, a violation of Section 455.

(b) (1) Every person described in paragraph (2), (3), and (4), for the periods specified therein, shall, while residing in, or if the person has no residence, while located in California, be required to, within 14 days of coming into, or changing the person's residence or location within any city, county, city and county, or campus wherein the person temporarily resides, or if the person has no residence, is located:

(A) Register with the chief of police of the city where the person is residing, or if the person has no residence, where the person is located.

(B) Register with the sheriff of the county where the person is residing, or if the person has no residence, where the person is located in an unincorporated area or city that has no police department.

(C) In addition to (A) or (B) above, register with the chief of police of a campus of the University of California, the California State University, or community college where the person is residing, or if the person has no residence, where the person is located upon the campus or any of its facilities.

(2) Any person who, on or after November 30, 1994, is convicted in any court in this state of arson or attempted arson shall be required to register, in accordance with the provisions of this section, for the rest of his or her life.

(3) Any person who, having committed the offense of arson or attempted arson, and after having been adjudicated a ward of the juvenile court on or after January 1, 1993, is discharged or paroled from the Department of the Youth Authority shall be required to register, in accordance with the provisions of this section, until that person attains the age of 25 years, or until the person has his or her

records sealed pursuant to Section 781 of the Welfare and Institutions Code, whichever comes first.

(4) Any person convicted of the offense of arson or attempted arson on or after January 1, 1985, through November 29, 1994, inclusive, in any court of this state, shall be required to register, in accordance with the provisions of this section, for a period of five years commencing, in the case where the person was confined for the offense, from the date of their release from confinement, or in the case where the person was not confined for the offense, from the date of sentencing or discharge, if that person was ordered by the court at the time that person was sentenced to register as an arson offender. The law enforcement agencies shall make registration information available to the chief fire official of a legally organized fire department or fire protection district having local jurisdiction where the person resides.

(c) Any person required to register pursuant to this section who is discharged or paroled from a jail, prison, school, road camp, or other penal institution, or from the Department of the Youth Authority where he or she was confined because of the commission or attempted commission of arson, shall, prior to the discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement. The official shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement shall give one copy of the form to the person, and shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; one copy to the chief fire official of a legally organized fire department or fire protection district having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall be transmitted in time so as to be received by the local law enforcement agency and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(d) All records relating specifically to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register under this subdivision for offenses adjudicated by a juvenile court attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare

and Institutions Code, whichever event occurs first. This subdivision shall not be construed to require the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by the court under Section 781 of the Welfare and Institutions Code.

(e) Any person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine shall, prior to the release or discharge, be informed of his or her duty to register under this section by the probation department of the county in which he or she has been convicted, and the probation officer shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon his or her release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, and shall send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge or release, one copy to the prosecuting agency that prosecuted the person, one copy to the chief fire official of a legally organized fire department or fire protection district having local jurisdiction where the person expects to reside upon his or her discharge or release, and one copy to the Department of Justice. The probation officer shall also retain one copy.

(f) The registration shall consist of (1) a statement in writing signed by the person, giving the information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency shall electronically forward the statement, fingerprints, and photograph to the Department of Justice.

(g) If any person required to register by this section changes his or her residence address, he or she shall inform, in writing within 10 days, the law enforcement agency with whom he or she last registered of his or her new address. The law enforcement agency shall, within three days after receipt of the information, electronically forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(h) Any person required to register under this section who violates any of the provisions thereof is guilty of a misdemeanor. Any person who has been convicted of arson or attempted arson and who is required to register under this section who willfully violates any of the provisions thereof is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to

absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

(i) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the Board of Prison Terms, the Department of the Youth Authority, or the court, as the case may be, shall order the parole or probation of that person revoked.

(j) 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.

(k) In any case in which a person who would be required to register pursuant to this section is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county, including, but not limited to, firefighting or disaster control, the local law enforcement agency having jurisdiction over the place or places where that assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person temporarily released under guard from the institution where he or she is confined.

(*l*) Nothing in this section shall be construed to conflict with Section 1203.4 concerning termination of probation and release from penalties and disabilities of probation.

A person required to register under this section may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 and, upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under this section. This certificate shall not relieve the petitioner of the duty to register under this section for any offense subject to this section of which he or she is convicted in the future.

Any person who is required to register under this section due to a misdemeanor conviction shall be relieved of the requirement to register if that person is granted relief pursuant to Section 1203.4.

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.

CHAPTER 519

An act to add and repeal Section 15318 of the Government Code, relating to the Alameda Corridor, and making an appropriation therefor.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 15318 is added to the Government Code, to read:

15318. (a) This section shall be known and may be cited as the Alameda Corridor Industrial Reclamation Act of 1999.

(b) The Alameda Corridor Industrial Reclamation Program is hereby established.

(c) The Community Development Commission of Los Angeles County shall, at its option, administer the program. The geographic boundaries of the program shall be the same as the geographic boundaries defined by the Alameda Corridor Transportation Authority's Job Training and Development Program.

(d) The program shall utilize local experience and expertise to develop and implement a plan to foster re-industrialization of the Alameda Corridor region. The strategies of the program shall include, but need not be limited to, both of the following:

(1) Improving workforce preparedness to meet the needs of a changing manufacturing environment.

(2) Retaining and expanding existing and attracting new manufacturing facilities by identifying and reclaiming dysfunctional real estate.

(e) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. The sum of one hundred thirty-five thousand dollars ($135,000) is hereby appropriated from the General Fund to the Trade and Commerce Agency, to be allocated to the Community Development Commission of Los Angeles County for the purposes of this act, contingent upon the provision of a 100-percent local match, which may include, in whole or in part, an in-kind match.

CHAPTER 520

An act to amend Sections 18075.5, 18400.1, 18420, 18424, and 18502 of, and to add Sections 18400.2, 18400.3, and 18400.4 to, the Health and Safety Code, relating to mobilehome parks, making an appropriation

therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 18075.5 of the Health and Safety Code is amended to read:

18075.5. Manufactured homes, mobilehomes, commercial coaches, and floating homes sold or used within this state shall be subject to annual registration with the department and payment of registration fees prescribed by Section 18114 except as follows:

(a) Manufactured homes, mobilehomes, and floating homes subject to local property taxation pursuant to Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code, and not installed on foundation systems pursuant to subdivision (a) of Section 18551, shall be subject to registration and payment of fees and penalties prescribed by Section 18114 at the time of original registration with the department, and upon subsequent sale, resale, or transfer of title. For purposes of this section, a transfer of title includes, but is not limited to, any change, addition, or deletion of one or more registered owners, legal owners, or junior lienholders.

(b) Manufactured homes, mobilehomes, and commercial coaches installed or to be installed on foundation systems pursuant to subdivision (a) of Section 18551 shall be exempt from registration so long as they remain affixed to the foundation system. In the event that the manufactured home, mobilehome, or commercial coach, is removed from a foundation system for any purpose other than dismantling or reinstallation on a foundation system, it shall be immediately subject to registration with the department.

(c) Except as otherwise provided in subdivisions (d) and (e), registration of a manufactured home, mobilehome, or commercial coach previously registered in another state is due 20 days after the date of entry into California and is delinquent if application is not made and any fees due are not paid within 40 days after that date of entry.

(d) Any member of the armed forces, whether a resident or nonresident, shall also be entitled to exemption from registration with respect to a manufactured home or mobilehome owned by the person upon which there is displayed a valid registration issued for the manufactured home or mobilehome by the owner's home state of residence or by a foreign jurisdiction where the owner was regularly assigned and stationed for duty by competent military orders at the time the registration was issued. Competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring the owner's

presence outside the foreign jurisdiction where the owner was regularly assigned and stationed for duty.

(e) Any person who enters California for the purpose of establishing or reestablishing residence or accepting gainful employment following his or her discharge from the armed forces of this country may occupy a manufactured home or mobilehome owned by that person at the time of his or her discharge and registered to him or her in a foreign jurisdiction where his or her military orders required his or her presence without registering the manufactured home or mobilehome in this state until the expiration of the registration period current at the time of his or her discharge and entrance into California.

(f) Any new and previously unregistered, unoccupied manufactured home, mobilehome, or commercial coach which is part of an inventory held for sale by a manufacturer or dealer in the course of business.

The department may adopt regulations for exempting additional classes of manufactured homes, mobilehomes, and commercial coaches from registration under a temporary or one-trip permit system which permits the lawful transportation and use of manufactured homes, mobilehomes, and commercial coaches not otherwise subject to registration.

(g) Floating homes, which are subject to local property taxation, as prescribed by Section 229 of the Revenue and Taxation Code, shall be subject to registration at the time of sale and upon any subsequent sale, resale, or transfer of title. Floating homes are subject to the fees prescribed by subdivision (c) of Section 18114 upon registration or reregistration.

SEC. 2. Section 18400.1 of the Health and Safety Code is amended to read:

18400.1. (a) In accordance with subdivision (b), the enforcement agency shall enter and inspect mobilehome parks, as required under this part, at least once every seven years, to ensure enforcement of this part and the regulations adopted pursuant to this part. The enforcement agency's inspection shall include an inspection of the exterior portions of individual manufactured homes and mobilehomes in each park inspected. Any notices of violation of this part shall be issued pursuant to Chapter 3.5 (commencing with Section 18420).

(b) In developing its mobilehome park maintenance inspection program, the enforcement agency shall inspect the mobilehome parks that the enforcement agency determines either:

(1) Had the most serious, or a substantial number of serious, health and safety violations as a result of inspections of the parks made pursuant to the mobilehome park maintenance inspection program during the 1991 through 1999 phase of the program.

(2) Have complaints that have been made to the enforcement agency regarding serious health and safety violations in the park. A

single complaint of a serious health and safety violation shall not automatically trigger an inspection of the entire park unless upon investigation of that single complaint the enforcement agency determines that there is a violation and that an inspection of the entire park is necessary.

(c) Nothing in this part shall be construed to allow the enforcement agency to issue a notice for a violation of existing laws or regulations that were not violations of the laws or regulations at the time the mobilehome park received its original permit to operate, or the standards governing any subsequent permit to construct, or at the time the manufactured home or mobilehome received its original installation permit, unless the enforcement agency determines that a condition of the park, manufactured home, or mobilehome endangers the life, limb, health, or safety of the public or occupants thereof.

(d) Not less than 30 days prior to the inspection of a mobilehome park under this section, the enforcement agency shall provide individual written notice of the inspection to the registered owners of the manufactured homes or mobilehomes, with a copy of the notice to the occupants thereof, if different than the registered owners, and to the owner or operator of the mobilehome park and the responsible person, as defined in Section 18603.

(e) At the sole discretion of the enforcement agency's inspector, a representative of either the park operator or the mobilehome owners may accompany the inspector during the inspection if that request is made to the enforcement agency or the inspector requests a representative to accompany him or her. If either party requests permission to accompany the inspector or is requested by the inspector to accompany him or her, the other party shall also be given the opportunity, with reasonable notice, to accompany the inspector. Only one representative of the park owner and one representative of the mobilehome owners in the park may accompany the inspector at any one time during the inspection. If more than one representative of the mobilehome owners in the park requests permission to accompany the inspector, the enforcement agency may adopt procedures for choosing that representative.

(f) The enforcement agency shall coordinate a preinspection orientation for mobilehome owners and mobilehome park operators with the use of an audio-visual presentation furnished by the department to affected local enforcement agencies. Enforcement agencies shall furnish the audio-visual presentation to park operators and mobilehome owner representatives in each park subject to inspection not less than 30 days prior to the inspection. Additionally, it is the Legislature's intent that the department shall, where practicable, conduct live presentations, forums, and outreach programs throughout the state to orient mobilehome owners and park operators on the mobilehome park maintenance inspection program and their rights and obligations under the program.

(g) Any local enforcement agency that relinquishes enforcement authority to the department shall remit to the department fees collected pursuant to paragraph (2) of subdivision (c) of Section 18502 that have not been expended for purposes of that paragraph.

(h) Each local enforcement agency that has assumed enforcement authority and has collected fees pursuant to paragraph (2) of subdivision (c) of Section 18502, shall provide the department, prior to September 1, 2002, and prior to September 1, 2005, with status reports on its specific inspection program to enable the department to complete the reports to the Legislature required in subdivision (i). Each report shall include information on the number of parks and spaces in its jurisdiction, the number of parks and spaces that have been inspected, the number and types of notices of violations issued against the parks, the number and types of notices of violations issued against the mobilehome owners, the number of notices of violation appealed, and the amount of fees collected and expended for the purpose of the inspection program for the period that the report covers.

(i) Notwithstanding Section 7550.5 of the Government Code, the department, prior to January 1, 2003, and prior to January 1, 2006, shall submit reports to the Senate Committee on Housing and Community Development, the Senate Select Committee on Mobile and Manufactured Homes, the Assembly Committee on Housing and Community Development, and the Assembly Select Committee on Mobilehomes on the status of the mobilehome park inspection program during the January 1, 2000, to December 31, 2002, and January 1, 2003, to December 31, 2005, periods, respectively. The respective reports shall include information on the total number of parks and spaces in the state, the number of parks and spaces that have been inspected, the number of notices of violations issued against the parks, the number of notices of violations issued against the mobilehome owners, the number of notices of violations appealed, and the amount of fees collected and expended for the purpose of the inspection program. The reports shall separate the information according to parks inspected by local enforcement agencies, parks inspected by the department, and total program activity. The January 1, 2006, report shall include any recommendations for changes to make the inspection program operate more effectively in the event that the program is extended beyond January 1, 2007.

(j) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. Section 18400.2 is added to the Health and Safety Code, to read:

18400.2. Enforcement agencies responsible for the enforcement of this part and the regulations adopted pursuant to this part shall

maintain all records on file of mobilehome park inspections conducted since January 1, 1991.

SEC. 4. Section 18400.3 is added to the Health and Safety Code, to read:

18400.3. (a) The department shall convene a task force of representatives of mobilehome owners, mobilehome park operators, local enforcement agencies that conduct mobilehome park inspections, and the Legislature, at least once a year, to provide input to the department on the conduct and operation of the mobilehome park maintenance inspection program. Prior to January 1, 2000, the department shall convene the task force to provide input to the department on the categorization of violations pursuant to subdivision (c).

(b) The Senate Committee on Rules and the Assembly Committee on Rules shall each designate a member of its respective house to be a member of the task force. Each legislative member of the task force may designate an alternate to represent him or her at task force meetings.

(c) With the input of the task force, the department shall, by January 1, 2000, reorganize violations under this part and the regulations adopted pursuant to this part into the following two categories:

(1) Those constituting imminent hazards representing an immediate risk to life, health, and safety and requiring immediate correction.

(2) Those constituting unreasonable risk to life, health, or safety and requiring correction within 90 days.

(d) Any matter that would have constituted a violation prior to January 1, 2000, that is not categorized in accordance with subdivision (c) on or after January 1, 2000, shall be of a minor or technical nature and shall not be subject to citation or notation on the record of an inspection conducted on or after January 1, 2000.

SEC. 5. Section 18400.4 is added to the Health and Safety Code, to read:

18400.4. For purposes of this chapter, "mobilehome owner" or "mobilehome owners" means the occupant of the manufactured home or mobilehome, or the registered owner of the manufactured home or mobilehome, if different from the occupant.

SEC. 6. Section 18420 of the Health and Safety Code is amended to read:

18420. (a) (1) If, upon inspection, the enforcement agency determines that a mobilehome park is in violation of any provision of this part, or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the owner or

operator of the mobilehome park and to the responsible person, as defined in Section 18603.

(2) In the event of a violation that constitutes an imminent threat to health and safety, the notice of violation shall be issued immediately and served on the owner or operator of the mobilehome park and to the responsible person, as defined in Section 18603.

(3) The owner or operator of the mobilehome park shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

(b) (1) If, upon inspection, the enforcement agency determines that a manufactured home, mobilehome, an accessory building or structure, or lot is in violation of any provision of Chapter 4 (commencing with Section 18500), Chapter 5 (commencing with Section 18601), Chapter 6 (commencing with Section 18690), or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the registered owner of the manufactured home or mobilehome, with a copy to the occupant thereof, if different from the registered owner.

(2) In the event a violation is discovered that constitutes an imminent hazard representing an immediate risk to life, health, and safety and requiring immediate correction, the notice of violation shall be issued immediately and served upon the occupant, with a copy mailed to the registered owner of the manufactured home or mobilehome, if different from the occupant, to the owner or operator of the mobilehome park, and to the responsible person, as defined in Section 18603.

(3) The registered owner of the manufactured home or mobilehome shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

(4) The enforcement agency may issue a notice of violation in accordance with this chapter to the owner of a recreational vehicle, or of factory-built housing, which occupies a lot within a mobilehome park.

(c) (1) Service of the notice of violation shall be effected either personally or by first-class mail. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation in as clear language as the technicality of the violation will allow the average layperson to understand what is being cited, including a reference to the statutory provisions or regulation alleged to have been violated, as well as any penalty provided by law for failure to make timely correction.

(2) The department shall develop a list of local agencies that have home rehabilitation or repair programs for which registered owners or occupants of manufactured homes and mobilehomes residing in

mobilehome parks may be eligible. The list shall be provided to registered owners or occupants who receive notices of violation and who reside in those jurisdictions that have rehabilitation or repair programs for which they may be eligible.

(3) For violations other than imminent threats to health and safety as provided in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b), the notice of violation shall allow 90 days from the postmarked date of the notice or date of personal delivery for the elimination of the condition constituting the alleged violation.

(4) If after the reinspection of a violation described in paragraph (3) of this subdivision, the enforcement agency determines that there is a valid reason why a violation has not been corrected, including, but not limited to, weather conditions, illness, availability of repair persons, or availability of financial resources, the enforcement agency may extend the time for correction, at its discretion, for a reasonable period of time after the 90-day period.

(5) Upon a reinspection after the 90-day period of a violation described in paragraph (3) of this subdivision, if a second notice to correct a violation that is the responsibility of the registered owner of the manufactured home or mobilehome pursuant to paragraph (1) of subdivision (b) is issued to the registered owner of a manufactured home or mobilehome, with a copy to the occupant thereof, if different from the registered owner, a copy of the notice shall also be provided to the owner or operator of the mobilehome park, and to the responsible person, as defined in Section 18603. Upon a reinspection after the 90-day period of a violation described in paragraph (3) of this subdivision, if a second notice to correct a mobilehome park violation pursuant to paragraph (1) of subdivision (a) is issued to the owner or operator of the mobilehome park and to the responsible person, as defined in Section 18603, the enforcement agency shall post a copy of the violation in a conspicuous place in the mobilehome park common area, and the posted notice shall only be removed by the enforcement agency when the violation is corrected.

(6) All violations described in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) shall be corrected within a reasonable time as determined by the enforcement agency. Notices of those violations shall state the time determined by the enforcement agency within which corrections must be made.

(d) Notwithstanding any other provision of law, the enforcement agency may, at its sole discretion, determine not to issue a notice of violation pursuant to this chapter if the condition which violates this part or the regulations adopted pursuant thereto does not constitute an imminent hazard representing an immediate risk to life, health, and safety and requiring immediate correction. If the enforcement agency determines, pursuant to this subdivision, not to issue a notice of violation, the enforcement agency shall include in its inspection

report a description of the condition which violates this part and its determination not to issue a notice of violation.

SEC. 7. Section 18424 of the Health and Safety Code is amended to read:

18424. This chapter shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

SEC. 8. Section 18502 of the Health and Safety Code, as amended by Section 3 of Chapter 773 of the Statutes of 1998, is amended to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) (1) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(2) Except for a special occupancy park, an additional annual fee of four dollars ($4) per lot shall be paid to the department or the local enforcement agency, as appropriate, at the time of payment of the annual operating fee. All revenues derived from this fee shall be used exclusively for the inspection of mobilehome parks and mobilehomes to determine compliance with the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)) and any regulations adopted pursuant to the act.

(3) The Legislature hereby finds and declares that the health and safety of mobilehome park occupants is a matter of public interest and concern and that the fee paid pursuant to paragraph (2) shall be used exclusively for the inspection of mobilehome parks and mobilehomes to ensure that the living conditions of mobilehome park occupants meet the health and safety standards of this part and the regulations adopted pursuant thereto. Therefore, notwithstanding any other provisions of law or local ordinance, rule, regulation, or initiative measure to the contrary, the holder of the permit to operate the mobilehome park shall be entitled to directly charge one-half of the per lot additional annual fee specified herein to each homeowner, as defined in Section 798.9 of the Civil Code. In that event, the holder of the permit to operate the mobilehome park shall be entitled to directly charge each homeowner for one-half of the per lot additional annual fee at the next billing for the rent and other charges immediately following the payment of the additional fee to the department or local enforcement agency.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

(g) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

SEC. 9. Section 18502 of the Health and Safety Code, as amended by Section 4 of Chapter 773 of the Statutes of 1998, is amended to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

(g) This section shall become operative on January 1, 2007.

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.

SEC. 11. Sections 2, 3, and 5 to 8, inclusive, of this act shall become operative on January 1, 2000.

SEC. 12. 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 ensure that the Department of Housing and Community Development can categorize violations of the Mobilehome Parks Act for purposes of implementing the mobilehome inspection program on or after January 1, 2000, and to ensure the health and safety of

mobilehome park occupants, it is necessary that this act take effect immediately.

CHAPTER 521

An act to amend Section 4420.5 of, and to repeal and add Section 4420 of, the Government Code, relating to public construction, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 4420 of the Government Code is repealed.

SEC. 2. Section 4420 is added to the Government Code, to read:

4420. (a) No state or local governmental agency and no person acting on behalf of any state or local governmental agency, except a governmental agency created pursuant to agreement or compact with another state, shall, with respect to any public building or construction contract that is about to be or that has been competitively bid, require the bidder to make application to, furnish financial data to, or obtain or procure any surety bond or contract of insurance specified in connection with the contract or specified by any law, ordinance, or regulation from, a particular surety or insurance company, agent, or broker.

(b) Notwithstanding subdivision (a), a state or local governmental agency may use owner-controlled or wrap-up insurance with regard to a construction or renovation project for which the total cost exceeds fifty million dollars ($50,000,000) if the agency meets all of the following conditions and certifies that it has made 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 minimize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.

(3) The program maintains completed operation coverage for a term for which the Insurance Commissioner has determined that coverage is reasonably commercially available, but in no event less than three years.

(4) Bid specifications clearly specify for all bidders the insurance coverage provided under the program and minimum safety requirements that must be met.

(5) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor or subcontractor believes is necessary to protect from any liability arising out of the contract.

(6) The program does not include surety insurance.

(c) Safety requirements for a project subject to this section may be developed jointly between the agency and the prime contractor. If the agency requires a safety program different than the prime contractor's usual and customary program, the program shall be mutually agreed upon, taking into account the prime contractor's experience, expertise, existing labor agreements relating to safety issues, and any unique safety issues relating to the project.

(d) This section shall not affect any provision in a collective bargaining agreement specified in Section 3201.5 of the Labor Code that is submitted by the prime contractor with its construction bid.

(e) The use of owner-controlled or wrap-up insurance under this chapter does not abrogate, limit, or otherwise affect any potential liability that is otherwise available at law.

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

(1) "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.

(2) "State governmental agency" means any state office, officer, department, division, bureau, board, commission, the University of California, or the California State University.

(3) "Local governmental agency" means any city, county, city and county, special district, authority, or other political subdivision of or within the state.

SEC. 3. Section 4420.5 of the Government Code is amended to read:

4420.5. (a) 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 minimize 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 paragraphs (3) to (6), inclusive, of subdivision (b) of Section 4420 and subdivisions (c) and (d) of that section.

SEC. 4. Notwithstanding any other provision of law, the contract approved by the governing board of the Los Angeles Unified School District in July 1998 to provide air-conditioning to 150 schools within the district is deemed to have met the requirements of Article 3 (commencing with Section 20110) of Chapter 1 of Part 3 of the Public Contract Code. This section shall be operative as of the date of approval of the contract by the governing board of the Los Angeles Unified School District.

SEC. 5. The Legislature finds and declares that for Section 4 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 Los Angeles Unified School District.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that substantial cost savings may be realized by agencies of local government, potentially in the tens of millions of dollars, due to the wrap-up insurance made available under this act, on projects that may be initiated in the next few months, and that the health of school children may be enhanced due to physical plant improvements covered by this act, it is necessary that this act take effect immediately.

CHAPTER 522

An act to amend Sections 16731, 16733, 16754.3, and 16781 of the Government Code, relating to state bonds.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 16731 of the Government Code is amended to read:

16731. Whenever the committee determines that the sale of all or any part of the bonds authorized to be issued is necessary or desirable, it shall adopt a resolution to that effect. The resolution shall specify the following as to the bonds then to be sold:

(a) The aggregate number, aggregate par value, denominations, and the date of the bonds to be then sold. The denominations shall be in the sum of one thousand dollars ($1,000) or multiples of that sum. The date appearing on the bonds shall be deemed to be the date of issuance for all purposes of this chapter, irrespective of the actual date of delivery of the bonds and the payment of the purchase price of the bonds.

(b) The dates of maturity and the amount of the bonds maturing at each date of maturity, which amounts need not be equal, but which dates shall be at annual or semiannual intervals. The first dates of maturity shall be not more than five years, and the last dates of maturity shall be not more than 45 years, after the date of the bonds.

(c) Whether or not the bonds are to be subject to redemption at the option of the board prior to maturity, and, if so, the provisions for the redemption, the manner of the call thereof, and the price or prices at which the bonds shall be subject to redemption.

(d) The annual rate, or rates, of interest that the bonds to be issued shall bear, which may be in multiples of one-eighth or one-twentieth of 1 percent, payable semiannually, but not in excess of 11 percent. The rate or rates may be determined at the time of the sale of the bonds. Alternatively, the resolution may specify that the bonds may pay a variable interest rate, as prescribed in the resolution. However, at the time and as the result of the issuance of any bonds bearing a variable interest rate, the aggregate principal amount of all state general obligation bonds bearing variable interest rates may not exceed 20 percent of the aggregate principal amount of all state general obligation bonds then outstanding. For purposes of this calculation, variable rate bonds shall not include bonds issued pursuant to Section 16731.6 or bonds that have an effective fixed interest rate through a hedging contract.

(e) The interest payment dates.

(f) The technical form and language of the bonds.

(g) Whether or not the right is reserved to make delivery in the form of temporary or interim bonds, certificates, or receipts, exchangeable for definitive bonds when executed and available for delivery. If the right is reserved, the denominations and form of the temporary securities shall be stated.

(h) Whether the bonds are to be issued in coupon form or in fully registered form, or both, and whether or not any coupon bonds are to be subject to registration. If coupon bonds are to be subject to registration, the resolution shall state whether the registration is to be as to principal only, as to both principal and interest, or in either of the forms at the option of the holder, and the form and all of the terms and conditions of the registration. If the registration is provided for, coupon bonds may be interchanged for registered bonds and registered bonds for coupon bonds, and all of the provisions of this chapter with reference to the payment of bonds and interest coupons shall be subject to the terms and conditions of the registration with respect to the payment of registered bonds and the interest on registered bonds.

(i) All other terms and conditions of the bonds and of the execution, issuance, and sale of the bonds, which shall be consistent with all of this chapter.

SEC. 2. Section 16733 of the Government Code is amended to read:

16733. The rate of interest to be borne by the bonds need not be uniform for all bonds of the same issue, and shall be the rate or rates specified in the bid accepted by the Treasurer, unless a variable interest rate is prescribed for the bonds in the resolution pursuant to subdivision (d) of Section 16731. The first interest payment date may be any date within one year after the date of the bonds.

SEC. 3. Section 16754.3 of the Government Code is amended to read:

16754.3. (a) The bonds specified in the resolution shall be sold by the Treasurer, at the time fixed by the Treasurer, and upon the notice that the Treasurer may deem advisable, or at the time to which the sale shall have been so continued, either at public sale, upon sealed bids, to the bidder whose bid will result in the lowest interest cost on account of those bonds or by negotiated sale if the Treasurer determines it will result in a lower interest cost. With respect to bonds sold by the Treasurer by negotiated sales, the Treasurer shall make a finding on the public record as to why a public sale was not used. The Treasurer may sell the bonds at a price below the par value thereof, but the discount on bonds so sold shall not exceed 3 percent of the par value. The interest, if any, accrued to the date of delivery of, and payment for, the bonds shall be added to the sale price of the bonds in any case.

(b) The method of determining the lowest interest cost bid shall be prescribed in the bond resolution and shall be limited to either the net interest cost method or the true interest cost method. The net

interest cost of each bid shall be determined by ascertaining the total amount of interest which the state would be required to pay under that bid, from the date of the bonds to the respective maturity dates of the bonds then offered for sale, at the interest rate or rates specified in the bid, less the total amount of the premium, if any (or plus the total amount of the discount, if any), offered by the bid. The bid under which the amount so ascertained is the least shall be deemed to be the bid resulting in the lowest net interest cost. Under the true interest cost method, the bonds shall be awarded to the bidder submitting the lowest interest rate bid determined by the nominal interest rate that, when compounded semiannually and used to discount the debt service payments on the bonds to the date of the bonds, results in an amount equal to the price bid for the bonds, excluding interest accrued to the date of delivery. Under either method the sale shall be for cash, payable upon the delivery of the bonds in definitive form, or if the right to deliver temporary securities has been reserved, then upon the delivery of the temporary securities.

(c) If the resolution prescribes that the bonds may pay a variable interest rate, as specified in subdivision (d) of Section 16731, the Treasurer may sell the bonds either at public sale, upon sealed bids, or by negotiated sales, as prescribed in subdivision (a).

(d) This section shall apply to any bonds authorized at any statewide election held at any time after the effective date of this section. Section 16754 shall apply only to bonds authorized at elections held before the effective date of this section.

SEC. 3.5. Section 16754.3 of the Government Code is amended to read:

16754.3. (a) The bonds specified in the resolution shall be sold by the Treasurer, at the time fixed by the Treasurer, and upon the notice that the Treasurer may deem advisable, or at the time to which the sale shall have been so continued, either at public sale to the bidder whose bid will result in the lowest interest cost on account of those bonds or by negotiated sale if the Treasurer determines it will result in a lower interest cost. With respect to bonds sold by the Treasurer by negotiated sales, the Treasurer shall make a finding on the public record as to why a public sale was not used. The Treasurer may sell the bonds at a price below the par value thereof, but the discount on bonds so sold shall not exceed 3 percent of the par value. The interest, if any, accrued to the date of delivery of, and payment for, the bonds shall be added to the sale price of the bonds in any case.

(b) The method of determining the lowest interest cost bid shall be prescribed in the bond resolution and shall be limited to either the net interest cost method or the true interest cost method. The net interest cost of each bid shall be determined by ascertaining the total amount of interest that the state would be required to pay under that bid, from the date of the bonds to the respective maturity dates of the bonds then offered for sale, at the interest rate or rates specified in

the bid, less the total amount of the premium, if any , or plus the total amount of the discount, if any, offered by the bid. The bid under which the amount so ascertained is the least shall be deemed to be the bid resulting in the lowest net interest cost. Under the true interest cost method, the bonds shall be awarded to the bidder submitting the lowest interest rate bid determined by the nominal interest rate that, when compounded semiannually and used to discount the debt service payments on the bonds to the date of the bonds, results in an amount equal to the price bid for the bonds, excluding interest accrued to the date of delivery. Under either method the sale shall be for cash, payable upon the delivery of the bonds in definitive form, or if the right to deliver temporary securities has been reserved, then upon the delivery of the temporary securities.

(c) If the resolution prescribes that the bonds may pay a variable interest rate, as specified in subdivision (d) of Section 16731, the Treasurer may sell the bonds either at public sale or by negotiated sales, as prescribed in subdivision (a).

(d) This section shall apply to any bonds authorized at any statewide election held at any time after the effective date of this section. Section 16754 shall apply only to bonds authorized at elections held before the effective date of this section.

SEC. 4. Section 16781 of the Government Code is amended to read:

16781. (a) Except as otherwise provided in this article or in subdivision (b), all of the provisions of this chapter are applicable to the issuance and sale of refunding bonds.

(b) (1) Sections 16730 and 16757 are not applicable to the issuance and sale of refunding bonds.

(2) Notwithstanding Section 16754.3, refunding bonds may be sold by negotiated sale if the Treasurer determines that it is in the best interest of the state to do so.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 16754.3 of the Government Code proposed by both this bill and AB 1506. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 16754.3 of the Government Code, and (3) this bill is enacted after AB 1506, in which case Section 3 of this bill shall not become operative.

CHAPTER 523

An act to amend Sections 21140.2, 21140.3, and 21148 of the Business and Professions Code, relating to petroleum franchises.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 27, 1999.]

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

SECTION 1. Section 21140.2 of the Business and Professions Code is amended to read:

21140.2. From the effective date of this section it shall be illegal for any franchisor by any action to require a franchisee to purchase only those tires, batteries, motor oil, and other automotive accessories sold by the franchisor. A franchised retail gasoline dealer may sell any tires, batteries, motor oil, and other automotive accessories as may be available to him or her for retail sale.

SEC. 2. Section 21140.3 of the Business and Professions Code is amended to read:

21140.3. The franchisor's executive officer, representative, or agent of the franchisor who negotiates any contract in violation of this chapter or who otherwise coerces a franchisee in violation of this chapter shall be subject to a civil penalty of up to one hundred thousand dollars ($100,000) for each offense. That penalty, reasonable attorney fees and costs of the suit shall be assessed and recovered in a civil action brought by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. If brought by a district attorney or county counsel, the entire amount of the penalty shall be paid to the treasurer of the county in which the judgment was entered. If brought by the Attorney General, one-half of the penalty, attorney fees, and costs of the suit shall be paid to the treasurer of the county where the action was brought and one-half shall be paid to the State Treasurer. If brought by a city attorney, one-half of the penalty, attorney fees, and costs of the suit shall be paid to the treasurer of the county and one-half to the city.

SEC. 3. Section 21148 of the Business and Professions Code is amended to read:

21148. (a) Notwithstanding the terms of any franchise, a franchisor may not withhold its consent to the sale, transfer, or assignment of the franchise by the franchisee to another person unless the franchisor demonstrates in writing to the franchisee within 45 days of receiving the application, or required paperwork, from the potential buyer any of the following:

(1) The proposed purchaser of the franchise has less business experience and training than that normally required by the franchisor of prospective franchisees.

(2) The proposed purchaser of the franchise has less financial resources than that normally required by the franchisor of prospective franchisees.

(3) The proposed purchaser of the franchise does not satisfy the then-current uniformly applied requirements, if any, of the franchisor applicable to prospective franchisees.

(4) The proposed purchaser of the franchise operates a franchise under an agreement with a franchisor other than the franchisor to

whom the sale, transfer, or assignment is proposed, if the then-current uniformly applied requirements, if any, of the franchisor precludes prospective franchisees from operating a franchise under an agreement with another franchisor.

(5) The franchisee has not offered in writing to sell, transfer, or assign the franchise to the franchisor on terms and conditions which are the same as those of the sale, transfer, or assignment of the franchise to the proposed purchaser; and the franchisee has not allowed the franchisor at least 30 days in which to either accept or decline the franchisee's written offer, prior to the sale, transfer, or assignment of the franchise to the proposed purchaser.

(b) Notwithstanding the terms of any franchise, a franchisor may not withhold its consent to the sale, transfer, or assignment of the franchise by the franchisee to another person for the purposes of diminishing the market value of the franchise.

(c) Notwithstanding the terms of any franchise, a franchisor may not withhold its consent to the sale, transfer, or assignment of the franchise by the franchisee to another person because that other person is of foreign origin or is non-English speaking as long as the prospective franchisee is able to adequately communicate with the franchisor and the appropriate federal, state, and local governmental agencies concerning matters of management, operations, environmental compliance, and public safety.

(d) If the franchisor consents to the sale, transfer, or assignment of the franchise to a prospective purchaser, the franchisor may require the franchisee to pay a transfer fee to the franchisor, provided the amount of the fee is reasonable when compared to the sale price of the franchise and provided the fee is not required in an effort to frustrate the proposed sale.

CHAPTER 524

An act to add and repeal Section 127 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to the Metropolitan Water District of Southern California.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 28, 1999.]

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

SECTION 1. Section 127 is added to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), to read:

Sec. 127. (a) Commencing on or before February 1, 2000, and each February 1 thereafter, the Metropolitan Water District of Southern California shall submit to the Legislature a report that includes a description of the complaints and other communications

submitted to the district from member public agencies that allege unethical, unauthorized, or illegal activities by the district against any member public agency or the public, in the previous calendar year.

(b) The Metropolitan Water District of Southern California shall include in the report a description of the actions taken by the district in response to the complaints and litigation.

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

SEC. 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.

CHAPTER 525

An act to amend Sections 1618.5 and 4382 of the Business and Professions Code, to amend Sections 43.98, 56.17, 3296, of the Civil Code, to amend Sections 10821, 13408.5 of the Corporations Code, to amend Sections 1322, 6253.4, 6254.5, 11552, 13975, 21661, 31696.1, 37615.1, and to add Section 13975.2 to, the Government Code, to amend Sections 1317.2a, 1317.6, 1342, 1342.5, 1343, 1344, 1345, 1346, 1346.4, 1346.5, 1347, 1348, 1349, 1349.2, 1351, 1351.1, 1351.2, 1352, 1352.1, 1353, 1354, 1355, 1356, 1356.1, 1357.03, 1357.09, 1357.10, 1357.11, 1357.15, 1357.16, 1357.17, 1357.53, 1357.54, 1358, 1358.1, 1358.2, 1358.4, 1358.6, 1358.9, 1358.10, 1358.11, 1358.12, 1358.14, 1358.15, 1358.16, 1358.18, 1358.19, 1358.21, 1359, 1360.1, 1361, 1363, 1364, 1365, 1365.5, 1366.4, 1367, 1367.02, 1367.3, 1367.35, 1367.695, 1367.10, 1367.15, 1367.24, 1368.02, 1370, 1371.4, 1372, 1373, 1373.95, 1374.9, 1374.26, 1374.27, 1374.28, 1374.60, 1374.64, 1374.66, 1374.67, 1374.68, 1374.69, 1374.71, 1375.1, 1376, 1377, 1380, 1380.1, 1380.3, 1381, 1382, 1384, 1385, 1386, 1387, 1388, 1389, 1389.1, 1389.2, 1391, 1392, 1393, 1393.5, 1393.6, 1394, 1394.1, 1394.3, 1394.5, 1394.7, 1394.8, 1395.5, 1396, 1397, 1397.5, 1397.6, 1398, 1399, 1399.1, 1399.70, 1399.71, 1399.72, 1399.73, 1399.74, 1399.75, 11758.47, 32121, 34943, 102910, 127580, and 128725 of, to add Sections 1341.1, 1341.2, 1341.3, 1341.4, 1341.5, 1341.6, 1341.7, 1341.8, 1341.9, 1341.10, 1341.11, 1341.12, 1341.13, 1341.14, 1342.3, 1347.1, and 1391.5 to, and to repeal and add Section 1341 of, the Health and Safety Code, to amend Sections 740, 742.407, 791.02, 1068, 1068.1, 10123.35, 10140.1, 10196, 10270.98, 10704, 10733, 10734, 10810, 10820, 10856, 12693.36, 12693.365, 12693.37, and 12695.18 of, the Insurance Code, to amend Section 4600.5 of the Labor Code, to amend Section 830.3 of the Penal Code, to amend Section 5777, 9541, 14087.32, 14087.36, 14087.37, 14087.38, 14087.4, 14087.9705, 14088.19, 14089, 14089.4,

14139.13, 14251, 14308, 14456, 14457, 14459, 14460, 14482, 14499.71, 22005, and 22010 of the Welfare and Institutions Code, relating to health care.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 28, 1999.]

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

SECTION 1. (a) The Legislature finds and declares that it is in the public interest that the administration and enforcement of the Knox-Keene Health Care Service Plan Act of 1975, as amended, be undertaken by a department of state government devoted exclusively to the licensing and regulation of managed health care.

(b) Therefore, it is the intent of the Legislature to transfer the administration of the Knox-Keene Health Care Service Plan Act of 1975, as amended, from the Commissioner of Corporations of the Department of Corporations to the Director of the Department of Managed Care established in the Business, Transportation and Housing Agency.

SEC. 2. Section 1618.5 of the Business and Professions Code is amended to read:

1618.5. (a) The board shall provide to the Director of the Department of Managed Care a copy of any accusation filed with the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when the accusation is filed, for a violation of this chapter relating to the quality of care of any dental provider of a health care service plan, as defined in Section 1345 of the Health and Safety Code. There shall be no liability on the part of, and no cause of action shall arise against, the State of California, the Board of Dental Examiners, the Department of Managed Care, the director of that department, or any officer, agent, employee, consultant, or contractor of the state or the board or the department for the release of any false or unauthorized information pursuant to this section, unless the release is made with knowledge and malice.

(b) The board and its executive officer and staff shall maintain the confidentiality of any nonpublic reports provided by the Director of the Department of Managed Care pursuant to subdivision (i) of Section 1380 of the Health and Safety Code.

SEC. 3. Section 4382 of the Business and Professions Code is amended to read:

4382. The board may audit persons for compliance with the limits established in paragraph (3) of subdivision (a) of Section 4380 except that in the case of a facility or pharmacy that predominately serves members of a prepaid group practice health care service plan, those audits may be undertaken solely by the Department of Managed Care pursuant to its authority to audit those plans.

SEC. 4. Section 43.98 of the Civil Code is amended to read:

43.98. (a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any consultant on account of any communication by that consultant to the Director of the Department of Managed Care or any other officer, employee, agent, contractor, or consultant of the Department of Managed Care, when that communication is for the purpose of determining whether health care services have been or are being arranged or provided in accordance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and any regulation adopted thereunder and the consultant does all of the following:

(1) Acts without malice.

(2) Makes a reasonable effort to obtain the facts of the matter communicated.

(3) Acts with a reasonable belief that the communication is warranted by the facts actually known to the consultant after a reasonable effort to obtain the facts.

(4) Acts pursuant to a contract entered into on or after January 1, 1998, between the Commissioner of Corporations and a state licensing board or committee, including, but not limited to, the Medical Board of California, or pursuant to a contract entered into on or after January 1, 1998, with the Commissioner of Corporations pursuant to Section 1397.6 of the Health and Safety Code.

(5) Acts pursuant to a contract entered into on or after July 1, 2000, between the Director of the Department of Managed Care and a state licensing board or committee, including, but not limited to, the Medical Board of California, or pursuant to a contract entered into on or after July 1, 1999, with the Director of the Department of Managed Care pursuant to Section 1397.6 of the Health and Safety Code.

(b) The immunities afforded by this section shall not affect the availability of any other privilege or immunity which may be afforded under this part. Nothing in this section shall be construed to alter the laws regarding the confidentiality of medical records.

SEC. 5. Section 56.17 of the Civil Code is amended to read:

56.17. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a health care service plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 7. Section 3296 of the Civil Code is amended to read:

3296. (a) Whenever a judgment for punitive damages is entered against an insurer or health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, the plaintiff in the action shall, within 10 days of entry of judgment, provide all of the following to the Commissioner of the Department of Insurance or the Director of the Department of Managed Care, whichever commissioner has regulatory jurisdiction over the insurer or health care service plan:

(1) A copy of the judgment.

(2) A brief recitation of the facts of the case.

(3) Copies of relevant pleadings, as determined by the plaintiff.

(b) The willful failure to comply with this section may, at the discretion of the trial court, result in the imposition of sanctions against the plaintiff or his or her attorney.

(c) This section shall apply to all judgments entered on or after January 1, 1995.

(d) "Insurer," for purposes of this section, means any person or entity transacting any of the classes of insurance described in Chapter 1 (commencing with Section 100) of Part 1 of Division 1 of the Insurance Code.

SEC. 8. Section 10821 of the Corporations Code is amended to read:

10821. Notwithstanding any other provision of this division, as to a health care service plan which is formed under or subject to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of this division, all references to the Attorney General contained in Part 2 or Part 3 of this division shall, in the case of health care service plans, be deemed to refer to the Director of the Department of Managed Care.

SEC. 9. Section 13408.5 of the Corporations Code is amended to read:

13408.5. No professional corporation may be formed so as to cause any violation of law, or any applicable rules and regulations, relating to fee splitting, kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions Code. A violation of any such provisions shall be grounds for the suspension or revocation of the certificate of registration of the professional corporation. The Commissioner of Corporations or the Director of the Department of Managed Care may refer any suspected violation of such provisions to the governmental agency regulating the profession in which the corporation is, or proposes to be engaged.

SEC. 10. Section 1322 of the Government Code is amended to read:

1322. In addition to any other statutory provisions requiring confirmation by the Senate of officers appointed by the Governor, the appointments by the Governor of the following officers and the

appointments by him or her to the listed boards and commissions are subject to confirmation by the Senate:

(1) California Horse Racing Board.
(2) Court Reporters Board of California.
(3) Chief, Division of Occupational Safety and Health.
(4) Chief, Division of Labor Standards Enforcement.
(5) Commissioner of Corporations.
(6) Contractors State License Board.
(7) Director of Fish and Game.
(8) State Director of Health Services.
(9) Chief Deputy, State Department of Health Services.
(10) Real Estate Commissioner.
(11) State Athletic Commissioner.
(12) State Board of Barbering and Cosmetology Examiners.
(13) State Librarian.
(14) Director of Social Services.
(15) Chief Deputy, State Department of Social Services.
(16) Director of Mental Health.
(17) Chief Deputy, State Department of Mental Health.
(18) Director of Developmental Services.
(19) Chief Deputy, State Department of Developmental Services.
(20) Director of Alcohol and Drug Abuse.
(21) Director of Rehabilitation.
(22) Chief Deputy, Department of Rehabilitation.
(23) Director of the Office of Statewide Health Planning and Development.
(24) Deputy, Health and Welfare Agency.
(25) Director, Department of Managed Care.
(26) Patient Advocate, Department of Managed Care.

SEC. 11. Section 6253.4 of the Government Code is amended to read:

6253.4. (a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations

Department of Managed Care
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

SEC. 12. Section 6254.5 of the Government Code is amended to read:

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 1909, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Care.

SEC. 13. Section 11552 of the Government Code is amended to read:

11552. Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:

(a) Commissioner of Financial Institutions.

(b) Commissioner of Corporations.

(c) Insurance Commissioner.

(d) Director of Transportation.

(e) Real Estate Commissioner.

(f) Director of Social Services.

(g) Director of Water Resources.
(h) Director of Corrections.
(i) Director of General Services.
(j) Director of Motor Vehicles.
(k) Director of the Youth Authority.
(*l*) Executive Officer of the Franchise Tax Board.
(m) Director of Employment Development.
(n) Director of Alcoholic Beverage Control.
(o) Director of Housing and Community Development.
(p) Director of Alcohol and Drug Abuse.
(q) Director of the Office of Statewide Health Planning and Development.
(r) Director of the Department of Personnel Administration.
(s) Chairperson and Member of the Board of Equalization.
(t) Director of Commerce.
(u) State Director of Health Services.
(v) Director of Mental Health.
(w) Director of Developmental Services.
(x) State Public Defender.
(y) Director of the California State Lottery.
(z) Director of Fish and Game.
(aa) Director of Parks and Recreation.
(ab) Director of Rehabilitation.
(ac) Director of Veterans Affairs.
(ad) Director of Consumer Affairs.
(ae) Director of Forestry and Fire Protection.
(af) Director of the Department of Managed Care.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 14. Section 13975 of the Government Code is amended to read:

13975. The Business and Transportation Agency in state government is hereby renamed the Business, Transportation and Housing Agency. The agency consists of the Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corporations, the Department of Housing and Community Development, the Department of Motor Vehicles, the Department of Real Estate, the Department of Transportation, the Department of Financial Institutions, the Department of Managed Care, the Stephen P. Teale Consolidated Data Center; and the California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

SEC. 15. Section 13975.2 is added to the Government Code, to read:

13975.2. (a) This section applies to every action brought in the name of the people of the State of California by the Director of the Department of Managed Care before, on, or after the effective date of this section, when enforcing provisions of those laws administered by the Director of the Department of Managed Care which authorize the Director of Managed Care to seek a permanent or preliminary injunction, restraining order, or writ of mandate, or the appointment of a receiver, monitor, conservator, or other designated fiduciary or officer of the court. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate 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, or any other ancillary relief may be granted as appropriate. The court may order that the expenses and fees of the receiver, monitor, conservator, or other designated fiduciary or officer of the court, be paid from the property held by the receiver, monitor, conservator, or other court designated fiduciary or officer, but neither the state, the Business, Transportation and Housing Agency, nor the Department of Managed Care shall be liable for any of those expenses and fees, unless expressly provided for by written contract.

(b) The receiver, monitor, conservator, or other designated fiduciary or officer of the court may do any of the following subject to the direction of the court:

(1) Sue for, collect, receive, and take into possession all the real and personal property derived by any unlawful means, including property with which that property or the proceeds thereof has been commingled if that property or the proceeds thereof cannot be identified in kind because of the commingling.

(2) Take possession of all books, records, and documents relating to any unlawfully obtained property and the proceeds thereof. In addition, they shall have the same right as a defendant to request, obtain, inspect, copy, and obtain copies of books, records, and documents maintained by third parties that relate to unlawfully obtained property and the proceeds thereof.

(3) Transfer, encumber, manage, control, and hold all property subject to the receivership, including the proceeds thereof, in the manner directed or ratified by the court.

(4) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof to any person who committed, aided or abetted, or participated in the commission of unlawful acts or who had knowledge that the property had been unlawfully obtained.

(5) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof made with the intent to hinder or delay the recovery of that property or any interest in it by

the receiver or any person from whom the property was unlawfully obtained.

(6) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof that was made within one year before the date of the entry of the receivership order if less than a reasonably equivalent value was given in exchange for the transfer, except that a bona fide transferee for value and without notice that the property had been unlawfully obtained may retain the interest transferred until the value given in exchange for the transfer is returned to the transferee.

(7) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof made within 90 days before the date of the entry of the receivership order to a transferee from whom the defendant unlawfully obtained some property if (A) the receiver establishes that the avoidance of the transfer will promote a fair pro rata distribution of restitution among all people from whom defendants unlawfully obtained property and (B) the transferee cannot establish that the specific property transferred was the same property that had been unlawfully obtained from the transferee.

(8) Exercise any power authorized by statute or ordered by the court.

(c) No person with actual or constructive notice of the receivership shall interfere with the discharge of the receiver's duties.

(d) No person may file any action or enforce or create any lien, or cause to be issued, served, or levied any summons, subpoena, attachment, or writ of execution against the receiver or any property subject to the receivership without first obtaining prior court approval upon motion with notice to the receiver and the Director of the Department of Managed Care. Any legal procedure described in this subdivision commenced without prior court approval is void except as to a bona fide purchaser or encumbrancer for value and without notice of the receivership. No person without notice of the receivership shall incur any liability for commencing or maintaining any legal procedure described by this subdivision.

(e) The court shall have jurisdiction of all questions arising in the receivership proceedings and may make any orders and judgments as may be required, including orders after noticed motion by the receiver to avoid transfers as provided in paragraphs (4), (5), (6), and (7) of subdivision (b).

(f) This section is cumulative to all other provisions of law.

(g) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(h) The recordation of a copy of the receivership order imparts constructive notice of the receivership in connection with any matter

involving real property located in the county in which the receivership order is recorded.

SEC. 16. Section 21661 of the Government Code is amended to read:

21661. (a) The board shall contract with carriers offering long-term care insurance plans and enter into health care service plan contracts covering long-term care.

The long-term care insurance plans and health care service plan contracts covering long-term care shall be made available periodically during open enrollment periods determined by the board.

(b) The board shall award contracts to carriers who are qualified to provide long-term care benefits, and may develop and administer self-funded long-term care insurance plans. The board may offer one or more long-term care insurance plans or health care service plan contracts covering long-term care and may offer service or indemnity-type plans.

(c) The long-term care insurance plans and health care service plan contracts covering long-term care shall include home, community, and institutional care and shall, to the extent determined by the board, provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, if the carrier has been approved by the Department of Managed Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) The classes of persons who shall be eligible to enroll are:

(1) Active and retired members and annuitants of the Public Employees' System, and their spouses, their parents, and their spouses' parents.

(2) Active and retired members and annuitants of any county or district subject to the County Employees Retirement Law of 1937, and their spouses, their parents, and their spouses' parents.

(3) Active and retired members and annuitants of the State Teachers' Retirement System, and their spouses, their parents, and their spouses' parents.

(4) Active employees and retirees and annuitants of any public agency that is a contracting agency under this part or Part 5 (commencing with Section 22751), and their spouses, their parents, and their spouses' parents.

(5) Active and retired members and annuitants of the Judges' Retirement System, and their spouses, their parents, and their spouses' parents.

(6) Active and retired members and annuitants of the Judges' Retirement System II, and their spouses, their parents, and their spouses' parents.

(7) Active and retired members and annuitants of the Legislators' Retirement System, and their spouses, their parents, and their spouses' parents.

(8) Members of the California Assembly and Senate and their spouse, their parents and their spouse's parents.

(9) Active and retired members and annuitants, and other classes of employees of other public employee retirement systems or public employers as the board determines may be eligible under the standards the board may prescribe, and their spouses, their parents, and their spouses' parents.

(10) Active employees and retirees and annuitants of any agency specified in paragraphs (1) through (9) who reside in the United States, its territories and possessions, or in a country in which a provider network can be established comparable in quality and effectiveness to those established in the United States.

(e) Any California public agency or retirement system may contract with the board to extend the provisions of this article to its active and retired employees and annuitants.

(f) Irrespective of paragraphs (1) through (10) of subdivision (d), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria established by the board.

(g) Irrespective of paragraphs (1) through (10) of subdivision (d), enrollment of active employees of the State of California shall be subject to Section 19867.

(h) The board shall establish eligibility criteria for enrollment, establish appropriate underwriting criteria for potential enrollees, define the scope of covered benefits, define the criteria to receive benefits, and set any other standards as needed.

(i) The full cost of enrollment in a long-term care insurance plan or in health care service plan contracts covering long-term care shall be paid by the enrollees.

(j) The long-term care insurance plans and health care service plan contracts covering long-term care shall not become part of, or subject to, the retirement or health benefits programs administered by the system.

(k) For any self-funded long-term care plan developed by the board, the premiums shall be deposited in the Public Employees' Long-term Care Fund.

SEC. 17. Section 31696.1 of the Government Code is amended to read:

31696.1. (a) The board of retirement may provide a long-term care insurance program for retired members and their spouses, their parents, and their spouses' parents.

(b) Subject to Section 31696.5, the board may permit active members and their spouses, their parents, and their spouses' parents to enroll in the long-term care insurance program.

(c) The long-term care insurance plan shall be made available periodically during open enrollment periods determined by the board.

(d) The board shall award contracts to carriers who are qualified to provide long-term care benefits.

(e) The long-term care insurance plan shall include home, community, and institutional care and shall provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code and shall meet those requirements set forth in the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). However, the Department of Managed Care shall have no jurisdiction over the insurance plan authorized by this article.

(f) Notwithstanding subdivision (a), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria approved by the board.

(g) The board shall approve eligibility criteria for enrollment, approve appropriate underwriting criteria for potential enrollees, approve the scope of covered benefits, approve the criteria to receive benefits, and approve any other standards as needed.

SEC. 18. Section 37615.1 of the Government Code is amended to read:

37615.1. Each local municipal hospital shall have and may exercise the following powers:

(a) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the municipality, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the hospital.

(b) To establish one or more trusts for the benefit of the municipal hospital, to administer any trusts declared or created for the benefit of the municipal hospital, to designate one or more trustees for trusts created by the municipality, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the municipal hospital.

(c) To employ any officers and employees, including architects and consultants, the board of trustees deems necessary to carry on properly the business of the municipal hospital.

(d) To do any and all things which an individual might do which are necessary for, and to the advantage of, a hospital and a nurses' training school, or a child-care facility for the benefit of employees of the hospital or residents of the municipality.

(e) To establish, maintain and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services and

facilities, retirement programs, services and facilities, chemical dependency programs, services and facilities, or other health care programs, services and facilities and activities at any location within or without the municipality for the benefit of the hospital and the people served by the municipal hospital.

"Health facilities," as used in this subdivision, means those facilities defined in either Section 15432 of this code or Section 1250 of the Health and Safety Code and specifically includes freestanding chemical dependency recovery units.

(f) To do any and all other acts and things necessary to carry out this division.

(g) To acquire, maintain, and operate ambulances or ambulance services within and without the municipality.

(h) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations which are necessary for the maintenance of good physical and mental health in the communities served by the municipal hospital.

(i) To establish and operate in cooperation with its medical staff a coinsurance plan between the municipal hospital and the members of its attending medical staff.

(j) With the approval of the city council, to establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the municipal hospital.

(k) With the consent of the city council, to contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(*l*) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Managed Care, at any location within or without the municipality for the benefit of residents of communities served by the hospital. However, no such activity shall be deemed to result in or constitute the giving or lending of the municipality's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities which corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage which is a health care service plan, as defined in subdivision (f) of Section 1345 of the

Health and Safety Code, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, unless exempted pursuant to Section 1343 or 1349.2 of the Health and Safety Code.

A municipal hospital shall not provide health care coverage for any employee of an employer operating within the service area of the municipal hospital, unless the Legislature specifically authorizes, or has authorized the coverage.

This section shall not authorize any municipal hospital to contribute its facilities to any joint venture that could result in transfer of the facilities from city ownership.

(m) To provide health care coverage to members of the hospital's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(n) With the consent of the city council, to establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the municipal hospital.

(o) With the consent of the city council, to transfer, with or without consideration, any part of its assets to one or more nonprofit corporations to operate and maintain the assets for the benefits of the area served by the hospital. The initial members of the board of directors of the nonprofit corporation or corporations shall be approved by the city council and shall be residents of the city.

(p) Nothing in this section, including, but not limited to, subdivision (e), shall be construed to permit a municipal hospital to operate or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility which is not located within the boundaries of the municipality.

SEC. 19. Section 1317.2a of the Health and Safety Code is amended to read:

1317.2a. (a) A hospital which has a legal obligation, whether imposed by statute or by contract, to the extent of that contractual obligation, to any third-party payor, including, but not limited to, a health maintenance organization, health care service plan, nonprofit hospital service plan, insurer, or preferred provider organization, a county, or an employer to provide care for a patient under the circumstances specified in Section 1317.2 shall receive that patient to the extent required by the applicable statute or by the terms of the contract, or, when the hospital is unable to accept a patient for whom it has a legal obligation to provide care whose transfer will not create a medical hazard as specified in Section 1317.2, it shall make appropriate arrangements for the patient's care.

(b) A county hospital shall accept a patient whose transfer will not create a medical hazard as specified in Section 1317.2 and who is determined by the county to be eligible to receive health care services required under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, unless the hospital

does not have appropriate bed capacity, medical personnel, or equipment required to provide care to the patient in accordance with accepted medical practice. When a county hospital is unable to accept a patient whose transfer will not create a medical hazard as specified in Section 1317.2, it shall make appropriate arrangements for the patient's care. The obligation to make appropriate arrangements as set forth in this subdivision does not mandate a level of service or payment, modify the county's obligations under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, create a cause of action, or limit a county's flexibility to manage county health systems within available resources. However, the county's flexibility shall not diminish a county's responsibilities under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code or the requirements contained in Chapter 2.5 (commencing with Section 1440).

(c) The receiving hospital shall provide personnel and equipment reasonably required in the exercise of good medical practice for the care of the transferred patient.

(d) Any third-party payor, including, but not limited to, a health maintenance organization, health care service plan, nonprofit hospital service plan, insurer, or preferred provider organization, or employer which has a statutory or contractual obligation to provide or indemnify emergency medical services on behalf of a patient shall be liable, to the extent of the contractual obligation to the patient, for the reasonable charges of the transferring hospital and the treating physicians for the emergency services provided pursuant to this article, except that the patient shall be responsible for uncovered services, or any deductible or copayment obligation. Notwithstanding this section, the liability of a third-party payor which has contracted with health care providers for the provision of these emergency services shall be set by the terms of that contract. Notwithstanding this section, the liability of a third-party payor that is licensed by the Insurance Commissioner or the Director of the Department of Managed Care and has a contractual obligation to provide or indemnify emergency medical services under a contract which covers a subscriber or an enrollee shall be determined in accordance with the terms of that contract and shall remain under the sole jurisdiction of that licensing agency.

(e) A hospital which has a legal obligation to provide care for a patient as specified by subdivision (a) of Section 1317.2a to the extent of its legal obligation, imposed by statute or by contract to the extent of that contractual obligation, which does not accept transfers of, or make other appropriate arrangements for, medically stable patients in violation of this article or regulations adopted pursuant thereto shall be liable for the reasonable charges of the transferring hospital and treating physicians for providing services and care which should have been provided by the receiving hospital.

(f) Subdivisions (d) and (e) do not apply to county obligations under Section 17000 of the Welfare and Institutions Code.

(g) Nothing in this section shall be interpreted to require a hospital to make arrangements for the care of a patient for whom the hospital does not have a legal obligation to provide care.

SEC. 20. Section 1317.6 of the Health and Safety Code is amended to read:

1317.6. (a) Hospitals found by the state department to have committed or to be responsible for a violation of this article or the regulations adopted pursuant thereto shall be subject to a civil penalty by the state department in an amount not to exceed twenty-five thousand dollars ($25,000) for each hospital violation. In determining the amount of the fine for a hospital violation, the state department shall take into account all of the following:

(1) Whether the violation was knowing or unintentional.

(2) Whether the violation resulted or was reasonably likely to result in a medical hazard to the patient.

(3) The frequency or gravity of the violation.

(4) Other civil fines which have been imposed as a result of the violation under Section 1395 of Title 42 of the United States Code.

(b) Notwithstanding this section, the director shall refer any alleged violation by a hospital owned and operated by a health care service plan involving a plan member or enrollee to the Department of Managed Care unless the director determines the complaint is without reasonable basis. The Department of Managed Care shall have sole authority and responsibility to enforce this article with respect to violations involving hospitals owned and operated by health care service plans in their treatment of plan members or enrollees.

(c) Physicians and surgeons found by the board to have committed, or to be responsible for, a violation of this article or the regulations adopted pursuant thereto shall be subject to any and all penalties which the board may lawfully impose and may be subject to a civil penalty by the board in an amount not to exceed five thousand dollars ($5,000) for each violation. A civil penalty imposed under this subdivision shall not duplicate federal fines, and the board shall credit any federal fine against a civil penalty imposed under this subdivision.

(d) The board may impose fines when it finds any of the following:

(1) The violation was knowing or willful.

(2) The violation was reasonably likely to result in a medical hazard.

(3) There are repeated violations.

(e) It is the intent of the Legislature that the state department has primary responsibility for regulating the conduct of hospital emergency departments and that fines imposed under this section should not be duplicated by additional fines imposed by the federal government as a result of the conduct which constituted a violation

of this section. To effectuate the Legislature's intent, the Governor shall inform the Secretary of the federal Department of Health and Human Services of the enactment of this section and request the federal department to credit any penalty assessed under this section against any subsequent civil monetary penalty assessed pursuant to Section 1395dd of Title 42 of the United States Code for the same violation.

(f) There shall be a cumulative maximum limit of thirty thousand dollars ($30,000) in fines assessed against hospitals under this article and under Section 1395dd of Title 42 of the United States Code for the same circumstances. To effectuate this cumulative maximum limit, the state department shall do both of the following:

(1) As to state fines assessed prior to the final conclusion, including judicial review, if available, of an action against a hospital by the federal Department of Health and Human Services under Section 1395dd of Title 42 of the United States Code (for the same circumstances finally deemed to have been a violation of this article or the regulations adopted hereunder, because of the state department action authorized by this article), remit and return to the hospital within 30 days after conclusion of the federal action, that portion of the state fine necessary to assure that the cumulative maximum limit is not exceeded.

(2) Immediately credit against state fines assessed after the final conclusion, including judicial review, if available, of an action against a hospital by the federal Department of Health and Human Services under Section 1395dd of Title 42 of the United States Code, which results in a fine against a hospital (for the same circumstances finally deemed to have been a violation of this article or the regulations adopted hereunder, because of the state department action authorized by this article), the amount of the federal fine, necessary to assure the cumulative maximum limit is not exceeded.

(g) Any hospital found by the state department pursuant to procedures established by the state department to have committed a violation of this article or the regulations adopted hereunder may have its emergency medical service permit revoked or suspended by the state department.

(h) Any administrative or medical personnel who knowingly and intentionally violates any provision of this article, may be charged by the local district attorney with a misdemeanor.

(i) Notification of each violation found by the state department of the provisions of this article or the regulations adopted hereunder shall be sent by the state department to the Joint Commission for the Accreditation of Hospitals, the state emergency medical services authority, and local emergency medical services agencies.

(j) Any person who suffers personal harm and any medical facility which suffers a financial loss as a result of a violation of this article or the regulations adopted hereunder may recover, in a civil action against the transferring or receiving hospital, damages, reasonable

attorney's fees, and other appropriate relief. Transferring and receiving hospitals from which inappropriate transfers of persons are made or refused in violation of this article and the regulations adopted hereunder shall be liable for the reasonable charges of the receiving or transferring hospital for providing the services and care which should have been provided. Any person potentially harmed by a violation of this article or the regulations adopted hereunder, or the local district attorney or the Attorney General, may bring a civil action against the responsible hospital or administrative or medical personnel, to enjoin the violation, and if the injunction issues, the court shall award reasonable attorney's fees. The provisions of this subdivision are in addition to other civil remedies and do not limit the availability of the other remedies.

(k) The civil remedies established by this section do not apply to violations of any requirements established by any county or county agency.

SEC. 21. Section 1341 of the Health and Safety Code is repealed.

SEC. 22. Section 1341 is added to the Health and Safety Code, to read:

1341. (a) There is in state government, in the Business, Transportation and Housing Agency, a Department of Managed Care that has charge of the execution of the laws of this state relating to health care service plans and the health care service plan business including, but not limited to, those laws directing the department to ensure that health care service plans provide enrollees with access to quality health care services and protect and promote the interests of enrollees.

(b) The chief officer of the Department of Managed Care is the Director of the Department of Managed Care. The director shall be appointed by the Governor and shall hold office at the pleasure of the Governor. The director shall receive an annual salary as fixed in the Government Code. Within 15 days from the time of the director's appointment, the director shall take and subscribe to the constitutional oath of office and file it in the office of the Secretary of State.

(c) The director shall be responsible for the performance of all duties, the exercise of all powers and jurisdiction, and the assumption and discharge of all responsibilities vested by law in the department. The director has and may exercise all powers necessary or convenient for the administration and enforcement of, among other laws, the laws described in subdivision (a).

SEC. 23. Section 1341.1 is added to the Health and Safety Code, to read:

1341.1. The director shall have his or her principal office in the City of Sacramento, and may establish branch offices in the City and County of San Francisco, in the City of Los Angeles, and in the City of San Diego. The director shall from time to time obtain the necessary furniture, stationery, fuel, light, and other proper

conveniences for the transaction of the business of the Department of Managed Care.

SEC. 24. Section 1341.2 is added to the Health and Safety Code, to read:

1341.2. In accordance with the laws governing the state civil service, the director shall employ and, with the approval of the Department of Finance, fix the compensation of such personnel as the director needs to discharge properly the duties imposed upon the director by law, including, but not limited to, a chief deputy, a public information officer, a chief enforcement counsel, and legal counsel to act as the attorney for the director in actions or proceedings brought by or against the director under or pursuant to any provision of any law under the director's jurisdiction, or in which the director joins or intervenes as to a matter within the director's jurisdiction, as a friend of the court or otherwise, and stenographic reporters to take and transcribe the testimony in any formal hearing or investigation before the director or before a person authorized by the director. The personnel of the Department of Managed Care shall perform such duties as the director assigns to them. Such employees as the director designates by rule or order shall, within 15 days after their appointments, take and subscribe to the constitutional oath of office and file it in the office of the Secretary of State.

SEC. 25. Section 1341.3 is added to the Health and Safety Code, to read:

1341.3. The director shall adopt a seal bearing the inscription: "Director, Department of Managed Care, State of California." The seal shall be affixed to or imprinted on all orders and certificates issued by him or her and such other instruments as he or she directs. All courts shall take judicial notice of this seal.

SEC. 26. Section 1341.4 is added to the Health and Safety Code, to read:

1341.4. In order to effectively support the Department of Managed Care in the administration of this law, there is hereby established in the State Treasury, the Managed Care Fund. The administration of the Department of Managed Care shall be supported from the Managed Care Fund.

SEC. 27. Section 1341.5 is added to the Health and Safety Code, to read:

1341.5. (a) The director, as a general rule, shall publish or make available for public inspection any information filed with or obtained by the department, unless the director finds that this availability or publication is contrary to law. No provision of this chapter authorizes the director or any of the director's assistants, clerks, or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or to other federal or state regulatory agencies. No provision of this chapter either creates or derogates from any privilege that exists at common law or otherwise

when documentary or other evidence is sought under a subpoena directed to the director or any of his or her assistants, clerks, or deputies.

(b) It is unlawful for the director or any of his or her assistants, clerks, or deputies to use for personal benefit any information that is filed with or obtained by the director and that is not then generally available to the public.

SEC. 28. Section 1341.6 is added to the Health and Safety Code, to read:

1341.6. (a) The Attorney General shall render to the director opinions upon all questions of law, relating to the construction or interpretation of any law under the director's jurisdiction or arising in the administration thereof, that may be submitted to the Attorney General by the director and upon the director's request shall act as the attorney for the director in actions and proceedings brought by or against the director under or pursuant to any provision of any law under the director's jurisdiction.

(b) Sections 11041, 11042, and 11043 of the Government Code do not apply to the Director of the Department of Managed Care.

SEC. 29. Section 1341.7 is added to the Health and Safety Code, to read:

1341.7. (a) Neither the director nor any of the director's assistants, clerks, or deputies shall be interested as a director, officer, shareholder, member other than a member of an organization formed for religious purposes, partner, agent, or employee of any person who, during the period of the official's or employee's association with the Department of Managed Care, was licensed or applied for license as a health care service plan under this chapter.

(b) Nothing contained in subdivision (a) shall prohibit the holdings or purchasing of any securities by the director, an assistant, clerk, or deputy in accordance with rules which shall be adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

SEC. 30. Section 1341.8 is added to the Health and Safety Code, to read:

1341.8. The director shall have the powers of a head of a department pursuant to Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code. The director may make the agreements that he or she deems necessary or appropriate in exercising his or her powers.

SEC. 31. Section 1341.9 is added to the Health and Safety Code, to read:

1341.9. The director and department succeed to, and are vested with, all duties, powers, purposes, responsibilities, and jurisdiction of the Commissioner of Corporations and the Department of Corporations as they relate to the Department of Corporations' Health Plan Program, health care service plans, and the health care service plan business, including those powers and duties specified in

this chapter. Nothing in this section abrogates, limits, diminishes, or otherwise restricts the duties, powers, purposes, responsibilities, and jurisdictions of the Commissioner of Corporations and the Department of Corporations under the Investment Program, the Financial Services Program, and the other laws in which jurisdiction is vested in the Commissioner of Corporations and the Department of Corporations.

SEC. 32. Section 1341.10 is added to the Health and Safety Code, to read:

1341.10. The department may use the unexpended balance of funds available for use in connection with the performance of the functions of the Department of Corporations to which the department succeeds pursuant to Section 1341.9.

SEC. 33. Section 1341.11 is added to the Health and Safety Code, to read:

1341.11. All officers and employees of the Department of Corporations who, on the operative date of this section, are performing any duty, power, purpose, responsibility, or jurisdiction to which the department succeeds, who are serving in the state civil service, other than as temporary employees, and engaged in the performance of a function vested by the department by Section 1341.9, shall be transferred to the department. The status, positions, and rights of those persons shall not be affected by the transfer and shall be retained by those persons as officers and employees of the department, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to positions exempted from civil service.

SEC. 34. Section 1341.12 is added to the Health and Safety Code, to read:

1341.12. The department shall have possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, agreements, contracts, claims, judgments, land, and other property, real or personal, connected with the administration of, or held for the benefit or use of, the Department of Corporations for the performance of the functions transferred to the department by Section 1341.9.

SEC. 35. Section 1341.13 is added to the Health and Safety Code, to read:

1341.13. All officers or employees of the department employed after the operative date of this section shall be appointed by the director.

SEC. 36. Section 1341.14 is added to the Health and Safety Code, to read:

1341.14. (a) Any regulation, order, or other action, adopted, prescribed, taken, or performed by the Department of Corporations or by an officer of the Department of Corporations in the administration of a program or the performance of a duty,

responsibility, or authorization transferred to the department by Section 1341.9 shall remain in effect and shall be deemed to be a regulation, order, or action of the department.

(b) No suit, action, or other proceeding lawfully commenced by or against the Department of Corporations or any other officer of the state, in relation to the administration of any program or the discharge of any duty, responsibility, or authorization transferred to the department by Section 1341.9 shall abate by reason of the transfer of the program, duty, responsibility, or authorization.

SEC. 37. Section 1342 of the Health and Safety Code is amended to read:

1342. It is the intent and purpose of the Legislature to promote the delivery of health and medical care to the people of the State of California who enroll in, or subscribe for the services rendered by, a health care service plan or specialized health care service plan by accomplishing all of the following:

(a) Ensuring the continued role of the professional as the determiner of the patient's health needs which fosters the traditional relationship of trust and confidence between the patient and the professional.

(b) Ensuring that subscribers and enrollees are educated and informed of the benefits and services available in order to enable a rational consumer choice in the marketplace.

(c) Prosecuting malefactors who make fraudulent solicitations or who use deceptive methods, misrepresentations, or practices which are inimical to the general purpose of enabling a rational choice for the consumer public.

(d) Helping to ensure the best possible health care for the public at the lowest possible cost by transferring the financial risk of health care from patients to providers.

(e) Promoting effective representation of the interests of subscribers and enrollees.

(f) Ensuring the financial stability thereof by means of proper regulatory procedures.

(g) Ensuring that subscribers and enrollees receive available and accessible health and medical services rendered in a manner providing continuity of care.

(h) Ensuring that subscribers and enrollees have their grievances expeditiously and thoroughly reviewed by the department.

SEC. 38. Section 1342.3 is added to the Health and Safety Code, to read:

1342.3. The director shall, in conjunction with the Advisory Committee on Managed Care, undertake a study to consider the feasibility and benefit of consolidating into the Department of Managed Care the regulation of other health insurers providing insurance through indemnity, preferred provider organization, and exclusive provider organization products, as well as through other managed care products regulated by the Department of Insurance.

The results of the study along with the recommendations of the director shall be incorporated into a report to the Governor and the Legislature no later than December 31, 2001.

SEC. 39. Section 1342.5 of the Health and Safety Code is amended to read:

1342.5. The director shall consult with the Insurance Commissioner prior to adopting any regulations applicable to health care service plans subject to this chapter and nonprofit hospital service plans subject to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code and other entities governed by the Insurance Code for the specific purpose of ensuring, to the extent practical, that there is consistency of regulations applicable to these plans and entities by the Insurance Commissioner and the Director of the Department of Managed Care.

SEC. 40. Section 1343 of the Health and Safety Code is amended to read:

1343. (a) This chapter shall apply to health care service plans and specialized health care service plan contracts as defined in subdivisions (f) and (n) of Section 1345.

(b) The director may by the adoption of rules or the issuance of orders deemed necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this chapter any class of persons or plan contracts if the director finds the action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and that the regulation of the persons or plan contracts is not essential to the purposes of this chapter.

(c) The director, upon request of the Director of Health Services, shall exempt from this chapter any county-operated pilot program contracting with the State Department of Health Services pursuant to Article 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions Code. The director may exempt non-county-operated pilot programs upon request of the State Director of Health Services. Those exemptions may be subject to conditions the Director of Health Services deems appropriate.

(d) Upon the request of the Director of Mental Health, the director may exempt from this chapter any mental health plan contractor or any capitated rate contract under Part 2.5 (commencing with Section 5775) of Division 5 of the Welfare and Institutions Code. Those exemptions may be subject to conditions the Director of Mental Health deems appropriate.

(e) This chapter shall not apply to:

(1) A person organized and operating pursuant to a certificate issued by the Insurance Commissioner unless the entity is directly providing the health care service through those entity-owned or contracting health facilities and providers, in which case this chapter shall apply to the insurer's plan and to the insurer.

(2) A plan directly operated by a bona fide public or private institution of higher learning which directly provides health care services only to its students, faculty, staff, administration, and their respective dependents.

(3) A nonprofit corporation formed under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(4) A person who does all of the following:

(A) Promises to provide care for life or for more than one year in return for a transfer of consideration from, or on behalf of, a person 60 years of age or older.

(B) Has obtained a written license pursuant to Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(C) Has obtained a certificate of authority from the State Department of Social Services.

(5) The Major Risk Medical Insurance Board when engaging in activities under Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code, and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code.

(6) The California Small Group Reinsurance Fund.

SEC. 41. Section 1344 of the Health and Safety Code is amended to read:

1344. (a) The director may from time to time adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the director may classify persons and matters within the director's jurisdiction, and may prescribe different requirements for different classes. The director may waive any requirement of any rule or form in situations where in the director's discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter. The director may adopt rules consistent with federal regulations and statutes to regulate health care coverage supplementing Medicare.

(b) The director may honor requests from interested parties for interpretive opinions.

(c) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, order, or written interpretive opinion of the director, or any such opinion of the Attorney General, notwithstanding that the rule, form, order, or written interpretive opinion may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

SEC. 42. Section 1345 of the Health and Safety Code is amended to read:

1345. As used in this chapter:

(a) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) "Basic health care services" means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance and ambulance transport services and out-of-area coverage. "Basic health care services" includes ambulance and ambulance transport services provided through the "911" emergency response system.

(c) "Enrollee" means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) "Evidence of coverage" means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) "Group contract" means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) "Health care service plan" or "specialized health care service plan" means either of the following:

(1) Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(2) Any person, whether located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who undertakes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee.

(g) "License" means, and "licensed" refers to, a license as a plan pursuant to Section 1353.

(h) "Out-of-area coverage," for purposes of paragraph (6) of subdivision (b), means coverage while an enrollee is anywhere outside the service area of the plan, and shall also include coverage for urgently needed services to prevent serious deterioration of an enrollee's health resulting from unforeseen illness or injury for which

treatment cannot be delayed until the enrollee returns to the plan's service area.

(i) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(j) "Person" means any person, individual, firm, association, organization, partnership, business trust, foundation, labor organization, corporation, limited liability company, public agency, or political subdivision of the state.

(k) "Service area" means a geographical area designated by the plan within which a plan shall provide health care services.

(*l*) "Solicitation" means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(m) "Solicitor" means any person who engages in the acts defined in subdivision (1) of this section.

(n) "Solicitor firm" means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (1) of this section.

(o) "Specialized health care service plan contract" means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(p) "Subscriber" means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(q) Unless the context indicates otherwise, "plan" refers to health care service plans and specialized health care service plans.

(r) "Plan contract" means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(s) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean those financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the director.

SEC. 43. Section 1346 of the Health and Safety Code is amended to read:

1346. (a) The director shall administer and enforce this chapter and shall have the following powers:

(1) Recommend and propose the enactment of any legislation necessary to protect and promote the interests of the public, subscribers, enrollees, and providers of health care services in health care service plans in the State of California.

(2) Provide information to federal and state legislative committees and executive agencies concerning plans.

(3) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of plans, subscribers, enrollees, and the public.

(4) Study, investigate, research, and analyze matters affecting the interests of plans, subscribers, enrollees, and the public.

(5) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information to implement the purposes, and enforce this chapter.

(6) Conduct audits and examinations of the books and records of plans and other persons subject to this chapter, and may prescribe by rule or order, but is not limited to, the following:

(A) The form and contents of financial statements required under this chapter.

(B) The circumstances under which consolidated statements shall be filed.

(C) The circumstances under which financial statements shall be audited by independent certified public accountants or public accountants.

(7) Conduct necessary onsite medical surveys of the health delivery system of each plan.

(8) Propose, develop, conduct, and assist in educational programs for the public, subscribers, enrollees, and licensees.

(9) Promote and establish standards of ethical conduct for the administration of plans and undertake activities to encourage responsibility in the promotion and sale of plan contracts and the enrollment of subscribers or enrollees in the plans.

(10) Advise the Governor on all matters affecting the interests of plans, subscribers, enrollees, and the public.

(11) Determine that investments of a plan's assets necessary to meet the requirements of Section 1376 are acceptable. For those purposes, reinvestment in the plan and investment in any obligations set forth in Article 3 (commencing with Section 1170) of, and Article 4 (commencing with Section 1190) of, Chapter 2 of Part 2 of Division 1 of the Insurance Code shall be considered acceptable. All other assets shall be invested in a prudent manner.

(b) The powers enumerated in subdivision (a) shall not limit, diminish, or otherwise restrict the other powers of the director specifically set forth in this chapter and other laws.

SEC. 44. Section 1346.4 of the Health and Safety Code is amended to read:

1346.4. (a) The Legislature finds and declares all of the following:

(1) That millions of Californians are insured under health care service plans regulated by the Knox-Keene Health Care Service Plan Act of 1975, and that more Californians each year are insuring themselves under these health plans.

(2) That greater awareness of the rights and protections afforded by the Knox-Keene Health Care Service Plan Act of 1975 will further the act's goal of providing access to quality health care.

(3) That the public, Knox-Keene providers, and those seeking to form health care service plans under the act will benefit from having the text of the act available to them, affording a greater understanding of what the act does and making it easier for providers to comply with its provisions.

(b) The director shall annually publish this chapter and make it available for sale to the public.

SEC. 45. Section 1346.5 of the Health and Safety Code is amended to read:

1346.5. If the director determines that an entity purporting to be a health care service plan exempt from the provisions of Section 740 of the Insurance Code is not a health care service plan, the director shall inform the Department of Insurance of that finding. However, if the director determines that an entity is a health care service plan, the director shall prepare and maintain for public inspection a list of those persons or entities described in subdivision (a) of Section 740 of the Insurance Code, which are not subject to the jurisdiction of another agency of this or another state or the federal government and which the director knows to be operating in the state. There shall be no liability of any kind on the part of the state, the director, and employees of the Department of Managed Care for the accuracy of the list or for any comments made with respect to it. Additionally, any solicitor or solicitor firm who advertises or solicits health care service plan coverage in this state described in subdivision (a) of Section 740 of the Insurance Code, which is provided by any person or entity described in subdivision (c) of that section, and where such coverage does not meet all pertinent requirements specified in the Insurance Code, and which is not provided or completely underwritten, insured or otherwise fully covered by a health care service plan, shall advise and disclose to any purchaser, prospective purchaser, covered person or entity, all financial and operational information relative to the content and scope of the plan and, specifically, as to the lack of plan coverage.

SEC. 46. Section 1347 of the Health and Safety Code is amended to read:

1347. (a) (1) There is established in the Department of Managed Care the Advisory Committee on Managed Care consisting of 22 members, as follows:

(A) The director.

(B) Eleven members appointed by the Governor, to be appointed as follows:

(i) A physician and surgeon with five years' experience in providing services to enrollees of a full service health care service plan.

(ii) An executive officer or medical director of a full service health care service plan.

(iii) A person with expertise and five years' experience in an administrative capacity of a health care service plan.

(iv) An executive officer with five years' experience with a contracting medical group.

(v) A medical director with a contracting medical group.

(vi) A member of the department's Financial Solvency Standards Board.

(vii) A physician-executive from an academic medical center.

(viii) A member of the department's clinical advisory panel.

(ix) A medical director or senior officer with a dental service plan.

(x) A medical director or senior officer with a vision service plan.

(xi) A medical director or senior officer with a mental health service plan.

(C) (i) Ten public members, four of whom shall be appointed by the Governor and three each by the Speaker of the Assembly and the Senate Committee on Rules who have a broad understanding of health and managed care issues and who have no financial interest in the delivery of health care services or in plans except that public members may be enrollees in a health care service plan or specialized health care service plan.

(ii) Of the public members appointed by the Governor, at least two of these members shall have significant academic backgrounds in the area.

(iii) Of the members appointed by the Speaker of the Assembly and the Senate Committee on Rules at least one public member appointed by each appointing power shall represent a health care consumer advocacy organization, with the Speaker's appointee representing an organization that devotes at least 50 percent of its time to resolving consumer complaints. The Speaker of the Assembly and the Senate Committee on Rules shall also each appoint one public member with significant background experience in the area of health care.

(D) With respect to members appointed by the Governor, if members with the qualifications specified in this subdivision are not available for service, other factors such as relevant health care experience and education shall be substituted at the discretion of the Governor.

(2) Except as otherwise specified in this paragraph, all appointments to the committee shall be for a period of three years. The initial appointments shall commence January 1, 2000. Of the

initial appointments made by the Governor, four shall serve for a term of one year and five shall serve for a term of two years, as designated by the Governor. Of the initial appointments made by the Speaker of the Assembly and the Senate Committee on Rules, one member appointed by each appointing power shall serve for a term of one year, and one shall serve for a term of two years, as designated by the appointing power.

(b) The committee shall meet at least quarterly and at the call of the chairperson. The director or the director's designee shall be chairperson of the committee. The committee may establish its own rules and procedures. All members shall serve without compensation, but the consumer representatives and public members shall be reimbursed from department funds for expenses actually and necessarily incurred by them in the performance of their duties.

(c) The purpose of the committee is to assist and advise the director in the implementation of the director's duties under this chapter and to make recommendations that it deems beneficial and appropriate as to how the department may best serve the people of the state. The committee shall produce an Internet-accessible annual public report that will, at a minimum, contain recommendations made to the director. At a minimum, the report shall include the following:

(1) Recommendations to the director on producing a report card to the public on the comparative performance of the managed care organizations overseen by the department, including health care service plans and subcontracting providers, building on the work of the private sector and other government entities and including complaint information received by the state.

(2) (A) The committee's top five recommendations for improving the health care delivery system and quality of care taking into consideration information received from the public.

(B) To assist the committee in formulating its recommendations, the views and suggestions of the public should be solicited. The committee shall accompany the director at least twice each year for public hearings (with at least one in northern California and at least one in southern California).

(C) This report shall be delivered to the director, the Governor, and to the appropriate policy committees of the Legislature.

(d) The director shall consult with the advisory committee on regulations and the recommendations of the committee shall be made a part of the record with regard to such regulations. The committee shall be given at least 40 days to review and comment on regulations prior to setting a notice of hearing for proposed regulations. Nothing in this subdivision prohibits the director from promulgating emergency regulations pursuant to the provisions of the Administrative Procedure Act. The director shall discuss budget changes relating to the administration of this chapter with the

committee, and the committee may make recommendations to the director regarding the proposed budget changes.

SEC. 47. Section 1347.1 is added to the Health and Safety Code, to read:

1347.1. There is established in the department a Clinical Advisory Panel consisting of five members appointed by the director. These members shall be professors of medicine from California's public and private medical schools and, additionally, two of the members shall be practicing physicians. The purpose of the advisory panel shall be to provide expert assistance to the director in ensuring that the external independent review system is meeting the quality standards necessary to protect the public's interest. The panel shall also assist the director with other clinical issues as needed, such as recommending approaches to globally reducing clinical errors, improving patient safety, increasing the practice of evidence-based medicine, and catalyzing clinical studies when a clear need for additional clinical evidence becomes evident. The panel shall review the decisions made in external review to ensure that the decisions are consistent with best practices and make recommendations for improvements where necessary. The panel shall meet quarterly and shall have staff provided as necessary.

SEC. 48. Section 1348 of the Health and Safety Code is amended 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 director 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 director'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. 49. Section 1349 of the Health and Safety Code is amended to read:

1349. It is unlawful for any person to engage in business as a plan in this state or to receive advance or periodic consideration in connection with a plan from or on behalf of persons in this state unless such person has first secured from the director a license, then in effect, as a plan or unless such person is exempted by the provisions of Section 1343 or a rule adopted thereunder. A person licensed pursuant to this chapter need not be licensed pursuant to the Insurance Code to operate a health care service plan or specialized health care service plan unless the plan is operated by an insurer, in which case the insurer shall also be licensed by the Insurance Commissioner.

SEC. 50. Section 1349.2 of the Health and Safety Code is amended to read:

1349.2. (a) A health care service plan, including a self-insured reimbursement plan that pays for or reimburses any part of the cost of health care services, operated by any city, county, city and county, public entity, political subdivision, or public joint labor management trust that satisfies all of the following criteria is exempt from this chapter:

(1) Provides services or reimbursement only to employees, retirees, and the dependents of those employees and retirees, of any participating city, county, city and county, public entity, or political subdivision, but not to the general public.

(2) Provides funding for the program.

(3) Provides that providers are reimbursed solely on a fee-for-service basis, so that providers are not at risk in contracting arrangements.

(4) Complies with Section 1378 and, to the extent that a plan contracts directly with providers for health care services, complies with Section 1379.

(5) Does not reduce or change current benefits except in accordance with collective bargaining agreements, or as otherwise authorized by the governing body in the case of unrepresented employees, and provides, pays for, or reimburses at least part of the

cost of all basic health care services as defined in subdivision (b) of Section 1345. Plans covering only a single specialized health care service, including dental, vision, or mental health services, shall not be required to cover all basic health care services.

(6) Refrains from any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code, and notifies enrollees of their right to file complaints with the director regarding any violation of this exemption.

(7) Maintains a fiscally sound operation and makes adequate provision against the risk of insolvency so that enrollees are not at risk, individually or collectively, as evidenced by audited financial statements submitted to the director as of the end of the plan's fiscal year, within 180 days after the close of that fiscal year. The financial statements shall be accompanied by a report, certificate, or opinion of an independent certified public accountant. The financial statements shall be prepared in accordance with generally accepted accounting principles. The audit shall be conducted in accordance with generally accepted auditing standards. However, audits of public entities or political subdivisions shall be conducted in accordance with governmental auditing standards. Upon request, the governing body of the plan shall provide copies thereof, without charge, to any enrollee or recognized and participating employee organization.

(8) Submits with the annual financial statements required under paragraph (7), a declaration, which shall conform to Section 2015.5 of the Code of Civil Procedure, executed by a plan official authorized by the governing body of the plan, that the plan complies with this subdivision.

(b) The director's responsibilities under this section shall be limited to enforcing compliance with this section. Nothing in this section shall impair or impede the director's enforcement authority or the remedies available under this chapter, including, but not limited to, the termination of the plan's exemption under this section.

(c) A public joint labor management trust is a trust maintained by one or more participating cities, counties, cities and counties, public entities, or political subdivisions that appoint management representatives, and one or more recognized and participating employee organizations representing the employees of one or more of the cities, counties, cities and counties, public entities, or political subdivisions that appoint labor representatives, in which the management representatives and the labor representatives have equal voting power in the operation of the trust.

(d) A public joint labor management trust shall not be deemed to provide services or reimbursement to the general public if, in addition to providing services or reimbursement to the persons described in paragraph (1) of subdivision (a), it provides services or reimbursement only to employees, retirees, and dependents of those

employees and retirees, of the recognized and participating employee organizations or of the trust.

(e) Nothing in this section shall be construed to prohibit a recognized and participating employee organization from filing a complaint with the director regarding a violation of this section.

SEC. 51. Section 1351 of the Health and Safety Code is amended to read:

1351. Each application for licensure as a health care service plan or specialized health care service plan under this chapter shall be verified by an authorized representative of the applicant, and shall be in a form prescribed by the department. Such application shall be accompanied by the fee prescribed by subdivision (a) of Section 1356 and shall set forth or be accompanied by each and all of the following:

(a) The basic organizational documents of the applicant; such as, the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments thereto.

(b) A copy of the bylaws, rules and regulations, or similar documents regulating the conduct of the internal affairs of the applicant.

(c) A list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, which shall include among others, all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers, each shareholder with over 5-percent interest in the case of a corporation, and all partners or members in the case of a partnership or association, and each person who has loaned funds to the applicant for the operation of its business.

(d) A copy of any contract made, or to be made, between the applicant and any provider of health care services, or persons listed in subdivision (c), or any other person or organization agreeing to perform an administrative function or service for the plan. The director by rule may identify contracts excluded from this requirement and make provision for the submission of form contracts. The payment rendered or to be rendered to such provider of health care services shall be deemed confidential information that shall not be divulged by the director, except that such payment may be disclosed and become a public record in any legislative, administrative, or judicial proceeding or inquiry. The plan shall also submit the name and address of each physician employed by or contracting with the plan, together with his or her license number.

(e) A statement describing the plan, its method of providing for health care services and its physical facilities. If applicable, this statement shall include the health care delivery capabilities of the plan including the number of full-time and part-time primary physicians, the number of full-time and part-time and specialties of all nonprimary physicians; the numbers and types of licensed or

state-certified health care support staff, the number of hospital beds contracted for, and the arrangements and the methods by which health care services will be provided. For purposes of this subdivision, primary physicians include general and family practitioners, internists, pediatricians, obstetricians, and gynecologists.

(f) A copy of the forms of evidence of coverage and of the disclosure forms or material which are to be issued to subscribers or enrollees of the plan.

(g) A copy of the form of the individual contract which is to be issued to individual subscribers and the form of group contract which is to be issued to any employers, unions, trustees, or other organizations.

(h) Financial statements accompanied by a report, certificate, or opinion of an independent certified public accountant. However, financial statements from public entities or political subdivisions of the state need not include a report, certificate, or opinion by an independent certified public accountant if the financial statement complies with such requirements as may be established by regulation of the director.

(i) A description of the proposed method of marketing the plan and a copy of any contract made with any person to solicit on behalf of the plan or a copy of the form of agreement used and a list of the contracting parties.

(j) A power of attorney duly executed by any applicant, not domiciled in this state, appointing the director the true and lawful attorney in fact of such applicant in this state for the purposes of service of all lawful process in any legal action or proceeding against the plan on a cause of action arising in this state.

(k) A statement describing the service area or areas to be served, including the service location for each provider rendering professional services on behalf of the plan and the location of any other plan facilities where required by the director.

(*l*) A description of enrollee-subscriber grievance procedures to be utilized as required by this chapter, and a copy of the form specified by subdivision (c) of Section 1368.

(m) A description of the procedures and programs for internal review of the quality of health care pursuant to the requirements set forth in this chapter.

(n) A description of the mechanism by which enrollees and subscribers will be afforded an opportunity to express their views on matters relating to the policy and operation of the plan.

(o) Evidence of adequate insurance coverage or self-insurance to respond to claims for damages arising out of the furnishing of health care services.

(p) Evidence of adequate insurance coverage or self-insurance to protect against losses of facilities where required by the director.

(q) If required by the director by rule pursuant to Section 1376, a fidelity bond or a surety bond in the amount prescribed.

(r) Evidence of adequate workmen's compensation insurance coverage to protect against claims arising out of work-related injuries that might be brought by the employees and staff of a plan against the plan.

(s) Such other information as the director may reasonably require.

SEC. 52. Section 1351.1 of the Health and Safety Code is amended to read:

1351.1. In addition to the requirements of Section 1351 and upon request of the director, each application shall be accompanied by authorization for disclosure to the director of financial records of each health care service plan or specialized health care service plan licensed under this chapter pursuant to Section 7473 of the Government Code. For the purpose of this chapter, the authorization for disclosure shall also include the financial records of any association, partnership or corporation controlling, controlled by or otherwise affiliated with a health care service plan or specialized health care service plan.

SEC. 53. Section 1351.2 of the Health and Safety Code is amended to read:

1351.2. (a) If a health care service plan licensed under the laws of Mexico elects to operate a health care service plan in this state, the plan shall apply for licensure as a health care service plan under this chapter by filing an application for licensure in the form prescribed by the department and verified by an authorized representative of the applicant. The plan shall be subject to the provisions of this chapter, and the rules adopted by the director thereunder, as determined by the director to be applicable. The application shall be accompanied by the fee prescribed by subdivision (a) of Section 1356 and shall demonstrate compliance with the following requirements:

(1) The plan is operating lawfully under the laws of Mexico.

(2) The plan offers and sells in this state only employer-sponsored group plan contracts exclusively for the benefit of citizens of Mexico legally employed in this state, and for the benefit of their dependents regardless of nationality, that pay for, reimburse the cost of, or arrange for the provision or delivery of health care services that are to be provided or delivered wholly in Mexico, except for the provision or delivery of those health care services set forth in subparagraphs (A) and (B) of paragraph (4).

(3) Solicitation of plan contracts in this state is made only through insurance brokers and agents licensed in this state or a third-party administrator licensed in this state, each of which is authorized by the plan to offer and sell plan group contracts.

(4) Group contracts provide, through a contract of insurance between the plan and an insurer admitted in this state, for the reimbursement of emergency and urgent care services provided out of area as required by subdivision (h) of Section 1345.

(5) All advertising, solicitation material, disclosure statements, evidences of coverage, and contracts are in compliance with the

appropriate provisions of this chapter and the rules or orders of the director. The director shall require that each of these documents contain a legend in 10-point type, in both English and Spanish, declaring that the health care service plan contract provided by the plan may be limited as to benefits, rights, and remedies under state and federal law.

(6) All funds received by the plan from a subscriber are deposited in an account of a bank organized under the laws of this state or in an account of a national bank located in this state.

(7) The plan maintains a tangible net equity as required by this chapter and the rules of the director, as calculated under United States generally accepted accounting principles, in the amount of a least one million dollars ($1,000,000). In lieu of an amount in excess of the minimum tangible net equity of one million dollars ($1,000,000), the plan may demonstrate a reasonable acceptable alternative reimbursement arrangement that the director may in his or her discretion accept. The plan shall also maintain a fidelity bond and a surety bond as required by Section 1376 and the rules of the director.

(8) The plan agrees to make all of its books and records, including the books and records of health care providers in Mexico, available to the director in the form and at the time and place requested by the director. Books and records shall be made available to the director no later than 24 hours from the date of the request.

(9) The plan files a consent to service of process with the director and agrees to be subject to the laws of this state and the United States in any investigation, examination, dispute, or other matter arising from the advertising, solicitation, or offer and sale of a plan contract, or the management or provision of health care services in this state or throughout the United States. The plan shall agree to notify the director, immediately and in no case later than one business day, if it is subject to any investigation, examination, or administrative or legal action relating to the plan or the operations of the plan initiated by the government of Mexico or the government of any state of Mexico against the plan or any officer, director, security holder, or contractor owning 10 percent or more of the securities of the plan. The plan shall agree that in the event of conflict of laws in any action arising out of the license, the laws of California and the United States shall apply.

(10) The plan agrees that disputes arising from the group contracts involving group contract holders and providers of health care services in the United States shall be subject to the jurisdiction of the courts of this state and the United States.

(b) The plan shall pay the application processing fee and other fees and assessments set forth in Section 1356. The director, by order, may designate provisions of this chapter and rules adopted thereunder that need not be applied to a health care service plan

licensed under the laws of Mexico when consistent with the intent and purpose of this chapter, and in the public interest.

SEC. 54. Section 1352 of the Health and Safety Code is amended to read:

1352. (a) A licensed plan shall, within 30 days after any change in the information contained in its application, other than financial or statistical information, file an amendment thereto in the manner the director may by rule prescribe setting forth the changed information. However, the addition of any association, partnership, or corporation in a controlling, controlled, or affiliated status relative to the plan shall necessitate filing, within a 30-day period of an authorization for disclosure to the director of financial records of the person pursuant to Section 7473 of the Government Code.

(b) Prior to any material modification of its plan or operations, a plan shall give notice thereof to the director, who shall, within 20 business days or such additional time as the plan may specify, by order approve, disapprove, suspend, or postpone the effectiveness of any such change, subject to Section 1354.

(c) A plan shall, within five days, give written notice to the director in the form as by rule may be prescribed, of any change in the officers, directors, partners, controlling shareholders, principal creditors, or persons occupying similar positions or performing similar functions, of the plan and of any management company of the plan, and of any parent company of the plan or management company. The director may by rule define the positions, duties, and relationships which are referred to in this subdivision.

(d) The fee for filing a notice of major modification pursuant to subdivision (b) shall be the actual cost to the director of processing the notice, including overhead, but shall not exceed seven hundred fifty dollars ($750).

SEC. 55. Section 1352.1 of the Health and Safety Code is amended to read:

1352.1. (a) Except as provided in subdivision (b), no plan shall enter into any new or modified plan contract or publish or distribute, or allow to be published or distributed on its behalf, any disclosure form or evidence of coverage, unless (1) a true copy thereof has first been filed with the director, at least 30 days prior to any such use, or any shorter period as the director by rule or order may allow, and (2) the director by notice has not found the plan contract, disclosure form, or evidence of coverage, wholly or in part, to be untrue, misleading, deceptive, or otherwise not in compliance with this chapter or the rules thereunder, and specified the deficiencies, within at least 30 days or any shorter time as the director by rule or order may allow.

(b) Except as provided in subdivision (c), a licensed plan which has been continuously licensed under this chapter for the preceding 18 months and which has had group contracts in effect at all times during that period may enter a new or modified group contract or

may publish or distribute, or allow to be published or distributed on its behalf, any group disclosure form or evidence of coverage without having filed the same for the director's prior approval, if the plan and the materials comply with each of the following conditions:

(1) The contract, disclosure form, or evidence of coverage, or any material provision thereof, has not been previously disapproved by the director by written notice to the plan and the plan reasonably believes that the contract, disclosure form, and evidence of coverage do not violate any requirements of this chapter or the rules thereunder.

(2) The plan files the contract and any related disclosure form and evidence of coverage with the director not later than 10 business days after entering the contract, or within any additional period as the director by rule or order may provide.

(3) If the person or group entering into the contract with the plan is not an employee welfare benefit plan, as defined in the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.), the person or group is not organized solely or principally for the purpose of providing health benefits to members of the group.

(c) The director by order may require a plan which has entered any group contract or published or distributed, or allowed to be published or distributed on its behalf, any disclosure form or evidence of coverage in violation of this chapter or the rules thereunder to comply with subdivision (a) prior to entering group contracts, or a specified class of group contracts, and prior to publishing or distributing, or allowing to be published or distributed on its behalf, related disclosure forms and evidences of coverage. An order issued pursuant to this subdivision shall be effective for 12 months from its issuance, and may be renewed by order if the contracts, disclosure forms, or evidences of coverage submitted under this subdivision indicate difficulties of voluntary compliance with the applicable provisions of this chapter and the rules thereunder.

(d) A licensed plan or other person regulated under this chapter may, within 30 days after receipt of any notice or order under this section, file a written request for a hearing with the director.

SEC. 56. Section 1353 of the Health and Safety Code is amended to read:

1353. The director shall issue a license to any person filing an application pursuant to this article, if the director, upon due consideration of the application and of the information obtained in any investigation, including, if necessary, an onsite inspection, determines that the applicant has satisfied the provisions of this chapter and that, in the judgment of the director, a disciplinary action pursuant to Section 1386 would not be warranted against such applicant. Otherwise, the director shall deny the application.

SEC. 57. Section 1354 of the Health and Safety Code is amended to read:

1354. Upon denial of application for licensure, or the issuance of an order pursuant to Section 1352 disapproving, suspending, or postponing a material modification, the director shall notify the applicant in writing, stating the reason for the denial and that the applicant has the right to a hearing if the applicant makes written request within 30 days after the date of mailing of the notice of denial. Service of the notice required by this subdivision may be made by certified mail addressed to the applicant at the latest address filed by the applicant in writing with the department.

SEC. 58. Section 1355 of the Health and Safety Code is amended to read:

1355. Every plan's license issued under this chapter shall remain in effect until revoked or suspended by the director, except that every transitional license shall expire on September 30, 1978, unless such expiration date is extended by the director.

SEC. 59. Section 1356 of the Health and Safety Code is amended to read:

1356. (a) Each plan applying for licensure under this chapter shall reimburse the director for the actual cost of processing the application, including overhead, up to an amount not to exceed twenty-five thousand dollars ($25,000). The cost shall be billed not more frequently than monthly and shall be remitted by the applicant to the director within 30 days of the date of billing. The director shall not issue a license to any applicant prior to receiving payment in full for all amounts charged pursuant to this subdivision.

(b) In addition to other fees and reimbursements required to be paid under this chapter, each licensed plan shall pay to the director an amount as estimated by the director for the ensuing fiscal year, as a reimbursement of its share of all costs and expenses, including, but not limited to, costs and expenses associated with routine financial examinations, grievances and complaints including maintaining a toll-free number for consumer grievances and complaints, investigation and enforcement, medical surveys and reports, and overhead, reasonably incurred in the administration of this chapter and not otherwise recovered by the director under this chapter or from the Managed Care Fund. The amount may be paid in two equal installments. The first installment shall be paid on or before August 1 of each year, and the second installment shall be paid on or before December 15 of each year. The amount paid by each plan, except a plan offering only specialized health care service plan contracts, shall be twelve thousand five hundred dollars ($12,500), plus an amount up to, but not exceeding, an amount computed in accordance with the following schedule:

Plan Enrollment	Amount of Assessment
0 to 25,000	$0 + 65 cents for each enrollee
25,001 to 75,000	$16,250 + 53 cents for each enrollee in excess of 25,000
75,001 to 150,000	$42,750 + 50 cents for each enrollee in excess of 75,000
150,001 to 300,000	$80,250 + 47 cents for each enrollee in excess of 150,000
over 300,000	$150,750 + 45 cents for each enrollee in excess of 300,000

Plans offering only specialized health care service plan contracts shall pay seven thousand five hundred dollars ($7,500), plus an amount up to, but not exceeding, an amount computed in accordance with the following schedule:

Plan Enrollment	Amount of Assessment
0 to 25,000	$0 + 48 cents for each enrollee
25,001 to 75,000	$12,000 + 36 cents for each enrollee in excess of 25,000
75,001 to 150,000	$30,000 + 30 cents for each enrollee in excess of 75,000
150,001 to 300,000	$52,500 + 26 cents for each enrollee in excess of 150,000
over 300,000	$91,500 + 24 cents for each enrollee in excess of 300,000

The amount paid by each plan shall be for each enrollee enrolled in its plan in this state as of the preceding March 31, and shall be fixed by the director by notice to all licensed plans on or before June 15 of each year. A plan that is unable to report the number of enrollees enrolled in the plan because it does not collect that data, shall provide the director with an estimate of the number of enrollees enrolled in the plan and the method used for determining the estimate. The director may, upon giving written notice to the plan, revise the estimate if the commissioner determines that the method used for determining the estimate was not reasonable.

In determining the amount assessed, the director shall consider all appropriations from the Managed Care Fund for the support of this chapter and all reimbursements provided for in this chapter.

(c) Each licensed plan shall also pay two thousand dollars ($2,000), plus an amount up to, but not exceeding, forty-eight hundredths of one cent ($0.0048) for each enrollee for the purpose of reimbursing its share of all costs and expenses, including overhead, reasonably anticipated to be incurred by the department in administering

Sections 1394.7 and 1394.8 during the current fiscal year. The amount charged shall be remitted within 30 days of the date of billing.

(d) In no case shall the reimbursement, payment, or other fee authorized by this section exceed the cost, including overhead, reasonably incurred in the administration of this chapter.

(e) The director by notice to all licensed plans on or before September 15, 2000, may require health care service plans to pay an additional assessment to provide the department with sufficient revenues to support the 2000–01 fiscal year costs and expenses as set forth in this section.

SEC. 60. Section 1356.1 of the Health and Safety Code is amended to read:

1356.1. Notwithstanding subdivision (f) of Section 1356, as amended by Section 2.5 of Chapter 722 of the Statutes of 1991, and subdivision (d) of Section 1356, as amended by Section 3 of Chapter 722 of the Statutes of 1991, if the director determines that the charges and assessments set forth in this chapter for any year are in excess of the amount necessary, or are insufficient, to meet the expenses of administration of this chapter, for that year, the assessments and charges for the following year shall be adjusted on a pro rata basis in accordance with the percentage of the excess or insufficiency as related to the actual charges and assessments for the year for which the excess or insufficiency occurred, in order to recover the actual costs of administration.

SEC. 61. Section 1357.03 of the Health and Safety Code is amended to read:

1357.03. (a) Upon the effective date of this article, a plan shall fairly and affirmatively offer, market, and sell all of the plan's health care service plan contracts that are sold to small employers or to associations that include small employers to all small employers in each service area in which the plan provides or arranges for the provision of health care services. A plan contracting to participate in the voluntary purchasing pool for small employers provided for under Article 4 (commencing with Section 10730) of Chapter 14 of Part 2 of Division 2 of the Insurance Code shall be deemed in compliance with this requirement for a contract offered through the voluntary purchasing pool established under Article 4 (commencing with Section 10730) of Chapter 14 of Part 2 of Division 2 of the Insurance Code in those geographic regions in which plans participate in the pool, if the contract is offered exclusively through the pool. Each plan shall make available to each small employer all small employer health care service plan contracts which the plan offers and sells to small employers or to associations that include small employers in this state. No plan or solicitor shall induce or otherwise encourage a small employer to separate or otherwise exclude an eligible employee from a health care service plan contract that is provided in connection with the employee's employment or membership in a guaranteed association.

(b) Every plan shall file with the director the reasonable employee participation requirements and employer contribution requirements that will be applied in offering its plan contracts. Participation requirements shall be applied uniformly among all small employer groups, except that a plan may vary application of minimum employee participation requirements by the size of the small employer group and whether the employer contributes 100 percent of the eligible employee's premium. Employer contribution requirements shall not vary by employer size. A health care service plan shall not establish a participation requirement that (1) requires a person who meets the definition of a dependent in subdivision (a) of Section 1357 to enroll as a dependent if he or she is otherwise eligible for coverage and wishes to enroll as an eligible employee and (2) allows a plan to reject an otherwise eligible small employer because of the number of persons that waive coverage due to coverage through another employer. Members of an association eligible for health coverage under subdivision (o) of Section 1357 but not electing any health coverage through the association shall not be counted as eligible employees for purposes of determining whether the guaranteed association meets a plan's reasonable participation standards.

(c) The plan may not reject an application from a small employer for a health care service plan contract if all of the following are met:

(1) The small employer, as defined by paragraph (1) of subdivision (*l*) of Section 1357 offers health benefits to 100 percent of its eligible employees, as defined by paragraph (1) of subdivision (b) of Section 1357. Employees who waive coverage on the grounds that they have other group coverage shall not be counted as eligible employees.

(2) The small employer agrees to make the required premium payments.

(3) The small employer agrees to inform the small employers' employees of the availability of coverage and the provision that those not electing coverage must wait one year to obtain coverage through the group if they later decide they would like to have coverage.

(4) The employees and their dependents who are to be covered by the plan contract work or reside in the service area in which the plan provides or otherwise arranges for the provision of health care services.

(d) No plan or solicitor shall, directly or indirectly, engage in the following activities:

(1) Encourage or direct small employers to refrain from filing an application for coverage with a plan because of the health status, claims experience, industry, occupation of the small employer, or geographic location provided that it is within the plan's approved service area.

(2) Encourage or direct small employers to seek coverage from another plan or the voluntary purchasing pool established under

Article 4 (commencing with Section 10730) of Chapter 14 of Part 2 of Division 2 of the Insurance Code because of the health status, claims experience, industry, occupation of the small employer, or geographic location provided that it is within the plan's approved service area.

(e) No plan shall, directly or indirectly, enter into any contract, agreement, or arrangement with a solicitor that provides for or results in the compensation paid to a solicitor for the sale of a health care service plan contract to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer. This subdivision shall not apply with respect to a compensation arrangement that provides compensation to a solicitor on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation, or geographic area of the small employer.

(f) No policy or contract that covers two or more employees may establish rules for eligibility, including continued eligibility, of any individual, or dependent of an individual, to enroll under the terms of the plan based on any of the following health status-related factors: (1) health status, (2) medical condition, including physical and mental illnesses, (3) claims experience, (4) receipt of health care, (5) medical history, (6) genetic information, (7) evidence of insurability, including conditions arising out of acts of domestic violence, or (8) disability.

(g) Each plan shall comply with the requirements of Section 1374.3.

SEC. 62. Section 1357.09 of the Health and Safety Code is amended to read:

1357.09. No plan shall be required to offer a health care service plan contract or accept applications for such a contract pursuant to this article in the case of any of the following:

(a) To a small employer, where the small employer is not physically located in a plan's approved service areas, or where an eligible employee and dependents who are to be covered by the plan contract do not work or reside within a plan's approved service areas.

(b) Within a specific service area or portion of a service area where a plan reasonably anticipates and demonstrates to the satisfaction of the director that it will not have sufficient health care delivery resources to assure that health care services will be available and accessible to the eligible employee and dependents of the employee because of its obligations to existing enrollees.

(1) A plan that cannot offer a health care service plan contract to small employers because it is lacking in sufficient health care delivery resources within a service area or a portion of a service area may not offer a contract in the area in which the plan is not offering coverage to small employers to new employer groups with more than 50 eligible employees until the plan notifies the director that it has the

ability to deliver services to small employer groups, and certifies to the director that from the date of the notice it will enroll all small employer groups requesting coverage in that area from the plan unless the plan has met the requirements of subdivision (d).

(2) Nothing in this article shall be construed to limit the director's authority to develop and implement a plan of rehabilitation for a health care service plan whose financial viability or organizational and administrative capacity have become impaired.

(c) Offer coverage to a small employer or an eligible employee as defined under paragraph (2) of subdivision (b) of Section 1357 which, within 12 months of application for coverage, disenrolled from a plan contract offered by the plan.

(d) The director approves the plan's certification that the number of eligible employees and dependents enrolled under contracts issued during the current calendar year equals or exceeds (1) in the case of a plan that administers any self-funded health coverage arrangements in California, 10 percent of the total enrollment of the plan in California as of December 31 of the preceding year, or (2) in the case of a plan that does not administer any self-funded health coverage arrangements in California, 8 percent of the total enrollment of the plan in California as of December 31 of the preceding year. If that certification is approved, the plan shall not offer any health care service plan contract to any small employers during the remainder of the current year.

(1) If a health care service plan treats an affiliate or subsidiary as a separate carrier for the purpose of this article because one health care service plan is qualified under the federal Health Maintenance Organization Act and does not offer coverage to small employers, while the affiliate or subsidiary offers a plan contract that is not qualified under the federal Health Maintenance Organization Act and offers plan contracts to small employers, the health care service plan offering coverage to small employers shall enroll new eligible employees and dependents, equal to the applicable percentage of the total enrollment of both the health care service plan qualified under the federal Health Maintenance Organization Act and its affiliate or subsidiary.

(2) The certified statement filed pursuant to this subdivision shall state the following:

(A) Whether the plan administers any self-funded health coverage arrangements in California.

(B) The plan's total enrollment as of December 31 of the preceding year.

(C) The number of eligible employees and dependents enrolled under contracts issued to small employer groups during the current calendar year.

The director shall, within 45 days, approve or disapprove the certified statement. If the certified statement is disapproved, the plan shall continue to issue coverage as required by Section 1357.03

and be subject to disciplinary action as set forth in Article 7 (commencing with Section 1386).

(e) A health care service plan that, as of December 31 of the prior year, had a total enrollment of fewer than 100,000 and 50 percent or more of the plan's total enrollment have premiums paid by the Medi-Cal program.

(f) A social health maintenance organization, as described in subdivision (a) of Section 2355 of the federal Deficit Reduction Act of 1984 (Public Law 97-369), that, as of December 31 of the prior year, had a total enrollment of fewer than 100,000 and has 50 percent or more of the organization's total enrollment premiums paid by the Medi-Cal program or Medicare programs, or by a combination of Medi-Cal and Medicare. In no event shall this exemption be based upon enrollment in Medicare supplement contracts, as described in Article 3.5 (commencing with Section 1358).

SEC. 63. Section 1357.10 of the Health and Safety Code is amended to read:

1357.10. The director may require a plan to discontinue the offering of contracts or acceptance of applications from any small employer or group with more than 50 employees upon a determination by the director that the plan does not have sufficient financial viability, or organizational and administrative capacity to assure the delivery of health care services to its enrollees. In determining whether the conditions of this section have been met, the director shall consider, but not be limited to, the plan's compliance with the requirements of Section 1367, Article 6 (commencing with Section 1375), and the rules adopted thereunder.

SEC. 64. Section 1357.11 of the Health and Safety Code is amended to read:

1357.11. All health care service plan contracts offered to a small employer shall be renewable with respect to all eligible employees or dependents at the option of the contractholder or small employer except:

(a) For nonpayment of the required premiums by the contractholder or small employer.

(b) For fraud or misrepresentation by the contractholder or small employer or, with respect to coverage of individuals, the individuals or their representatives.

(c) For noncompliance with a plan's participation or employer contribution requirements at the time of renewal.

(d) When the plan ceases to provide or arrange for the provision of health care services for new small employer health care service plan contracts in this state; provided, however, that the following conditions are satisfied:

(1) Notice of the decision to cease new or existing small employer health benefits plans in this state is provided to the director and to either the contractholder or small employer at least 180 days prior to the discontinuation of the coverage.

(2) Small employer health care service plan contracts subject to this chapter shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a plan which remains in force, any plan that ceases to offer for sale new small employer health care service plan contracts shall continue to be governed by this article with respect to business conducted under this article.

(3) Except as authorized under subdivision (d) of Section 1357.09 and Section 1357.10, a plan that ceases to write new small employer business in this state after the effective date of this article shall be prohibited from offering for sale new small employer health care service plan contracts in this state for a period of five years from the date of notice to the director.

(e) When the plan withdraws a health care service plan contract from the small employer market; provided, the plan notifies all affected contractholders or small employers and the director at least 90 days prior to the discontinuation of those contracts, and the plan makes available to the small employer all plan contracts that it makes available to new small employer business; and provided, that the premium for the new plan contract complies with the renewal increase requirements set forth in Section 1357.12.

SEC. 65. Section 1357.15 of the Health and Safety Code is amended to read:

1357.15. (a) At least 20 business days prior to renewing or amending a plan contract subject to this article which will be in force on the operative date of this article, a plan shall file a notice of material modification with the director in accordance with the provisions of Section 1352. The notice of material modification shall include a statement certifying that the plan is in compliance with subdivision (j) of Section 1357 and Section 1357.12. The certified statement shall set forth the standard employee risk rate for each risk category and the highest and lowest risk adjustment factors that will be used in setting the rates at which the contract will be renewed or amended. Any action by the director, as permitted under Section 1352, to disapprove, suspend or postpone the plan's use of a plan contract shall be in writing, specifying the reasons that the plan contract does not comply with the requirements of this chapter.

(b) At least 20 business days prior to offering a plan contract subject to this article, all plans shall file a notice of material modification with the director in accordance with the provisions of Section 1352. The notice of material modification shall include a statement certifying that the plan is in compliance with subdivision (j) of Section 1357 and Section 1357.12. The certified statement shall set forth the standard employee risk rate for each risk category and the highest and lowest risk adjustment factors that will be used in setting the rates at which the contract will be offered. Plans that will be offering to a small employer plan contracts approved by the director prior to the effective date of this article shall file a notice of

material modification in accordance with this subdivision. Any action by the director, as permitted under Section 1352, to disapprove, suspend or postpone the plan's use of a plan contract shall be in writing, specifying the reasons that the plan contract does not comply with the requirements of this chapter.

(c) Prior to making any changes in the risk categories, risk adjustment factors or standard employee risk rates filed with the director pursuant to subdivision (a) or (b), the plan shall file as an amendment a statement setting forth the changes and certifying that the plan is in compliance with subdivision (j) of Section 1357 and Section 1357.12. A plan may commence offering plan contracts utilizing the changed risk categories set forth in the certified statement on the 31st day from the date of the filing, or at an earlier time determined by the director, unless the director disapproves the amendment by written notice, stating the reasons therefor. If only the standard employee risk rate is being changed, and not the risk categories or risk adjustment factors, a plan may commence offering plan contracts utilizing the changed standard employee risk rate upon filing the certified statement unless the director disapproves the amendment by written notice.

(d) Periodic changes to the standard employee risk rate that a plan proposes to implement over the course of up to 12 consecutive months may be filed in conjunction with the certified statement filed under subdivision (a), (b), or (c).

(e) Each plan shall maintain at its principal place of business all of the information required to be filed with the director pursuant to this section.

(f) Each plan shall make available to the director, on request, the risk adjustment factor used in determining the rate for any particular small employer.

(g) Nothing in this section shall be construed to limit the director's authority to enforce the rating practices set forth in this article.

SEC. 66. Section 1357.16 of the Health and Safety Code is amended to read:

1357.16. (a) Health care service plans may enter into contractual agreements with qualified associations, as defined in subdivision (b), under which these qualified associations may assume responsibility for performing specific administrative services, as defined in this section, for qualified association members. Health care service plans that enter into agreements with qualified associations for assumption of administrative services shall establish uniform definitions for the administrative services that may be provided by a qualified association or its third-party administrator. The health care service plan shall permit all qualified associations to assume one or more of these functions when the health care service plan determines the qualified association demonstrates the administrative capacity to assume these functions.

For the purposes of this section, administrative services provided by qualified associations or their third-party administrators shall be services pertaining to eligibility determination, enrollment, premium collection, sales, or claims administration on a per-claim basis that would otherwise be provided directly by the health care service plan or through a third-party administrator on a commission basis or an agent or solicitor work force on a commission basis.

Each health care service plan that enters into an agreement with any qualified association for the provision of administrative services shall offer all qualified associations with which it contracts the same premium discounts for performing those services the health care service plan has permitted the qualified association or its third-party administrator to assume. The health care service plan shall apply these uniform discounts to the health care service plan's risk adjusted employee risk rates after the health plan has determined the qualified association's risk adjusted employee risk rates pursuant to Section 1357.12. The health care service plan shall report to the Department of Managed Care its schedule of discount for each administrative service.

In no instance may a health care service plan provide discounts to qualified associations that are in any way intended to, or materially result in, a reduction in premium charges to the qualified association due to the health status of the membership of the qualified association. In addition to any other remedies available to the director to enforce this chapter, the director may declare a contract between a health care service plan and a qualified association for administrative services pursuant to this section null and void if the director determines any discounts provided to the qualified association are intended to, or materially result in, a reduction in premium charges to the qualified association due to the health status of the membership of the qualified association.

(b) For the purposes of this section, a qualified association is a nonprofit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, that conforms to all of the following requirements:

(1) It accepts for membership any individual or small employer meeting its membership criteria.

(2) It does not condition membership directly or indirectly on the health or claims history of any person.

(3) It uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association.

(4) It is organized and maintained in good faith for purposes unrelated to insurance.

(5) It existed on January 1, 1972, and has been in continuous existence since that date.

(6) It has a constitution and bylaws or other analogous governing documents that provide for election of the governing board of the association by its members.

(7) It offered, marketed, or sold health coverage to its members for 20 continuous years prior to January 1, 1993.

(8) It agrees to offer only to association members any plan contract.

(9) It agrees to include any member choosing to enroll in the plan contract offered by the association, provided that the member agrees to make required premium payments.

(10) It complies with all provisions of this article.

(11) It had at least 10,000 enrollees covered by association sponsored plans immediately prior to enactment of Chapter 1128 of the Statutes of 1992.

(12) It applies any administrative cost at an equal rate to all members purchasing coverage through the qualified association.

(c) A qualified association shall comply with Section 1357.52.

(d) The department shall monitor compliance with this section and report the impact of any noncompliance to the Assembly Insurance Committee and the Senate Insurance Committee on January 1, 2002.

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

SEC. 67. Section 1357.17 of the Health and Safety Code is amended to read:

1357.17. The director may issue regulations that are necessary to carry out the purposes of this article. Prior to the public comment period required on the regulations under the Administrative Procedure Act, the director shall provide the Insurance Commissioner with a copy of the proposed regulations. The Insurance Commissioner shall have 30 days to notify the director in writing of any comments on the regulations. The Insurance Commissioner's comments shall be included in the public notice issued on the regulations. Any rules and regulations adopted pursuant to this article may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Until December 31, 1994, the adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety or general welfare.

SEC. 68. Section 1357.53 of the Health and Safety Code is amended to read:

1357.53. All group health benefit plans shall be renewable with respect to the contractholder or employer except as follows:

(a) For nonpayment of the required premiums by the contractholder or employer.

(b) For fraud or other intentional misrepresentation of material fact by the contractholder or employer.

(c) For noncompliance with a material plan contract provision.

(d) If the plan ceases to provide or arrange for the provision of health care services for new health benefit plans in the state; provided, however, that the following conditions are satisfied:

(1) Notice of the decision to cease new or existing group health benefit plans in the state shall be provided to the director and to either the contractholder or employer at least 180 days prior to discontinuation of this coverage.

(2) Group health benefit plans shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a plan that remains in force, any plan that ceases to offer for sale new group health benefit plans shall continue to be governed by this section with respect to business conducted under this section.

(3) Except as authorized under subdivision (d) of Section 1357.09 and Section 1357.10, a plan that ceases to write new group health benefit plans in this state after the effective date of this section shall be prohibited from offering for sale group health benefit plans in this state for a period of five years from the date of notice to the director.

(e) If the plan withdraws a group health benefit plan from the market; provided, that the plan notifies all affected contractholders or employers and the director at least 90 days prior to the discontinuation of these plans, and that the plan makes available to the employer all health benefit plans that it makes available to new employer business without regard to the claims experience or health-related factors of enrollees.

SEC. 69. Section 1357.54 of the Health and Safety Code is amended to read:

1357.54. All individual health benefit plans, except for short-term limited duration insurance, shall be renewable with respect to all eligible individuals or dependents at the option of the individual except as follows:

(a) For nonpayment of the required premiums or contributions by the individual in accordance with the terms of the health insurance coverage or the timeliness of the payments.

(b) For fraud or intentional misrepresentation of material fact under the terms of the coverage by the individual.

(c) Movement of the individual contractholder outside the service area, but only if the coverage is terminated uniformly without regard to any health status-related factor of covered individuals.

(d) If the plan ceases to provide or arrange for the provision of health care services for new individual health benefit plans in this state; provided, however, that the following conditions are satisfied:

(1) Notice of the decision to cease new or existing individual health benefit plans in the state is provided to the director and to the individual at least 180 days prior to discontinuation of that coverage.

(2) Individual health benefit plans shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a plan that remains in force, any plan that ceases to offer for sale new individual health benefit plans shall continue to be governed by this section with respect to business conducted under this section.

(3) A plan that ceases to write new individual health benefit plans in this state after the effective date of this section shall be prohibited from offering for sale individual health benefit plans in this state for a period of five years from the date of notice to the director.

(e) If the plan withdraws an individual health benefit plan from the market; provided, that the plan notifies all affected individuals and the director at least 90 days prior to the discontinuation of these plans, and that the plan makes available to the individual all health benefit plans that it makes available to new individual business without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for the coverage.

SEC. 70. Section 1358 of the Health and Safety Code is amended to read:

1358. Every health care service plan that offers any contract that primarily or solely supplements Medicare, or is advertised or represented as a supplement to Medicare, shall, in addition to complying with this chapter and rules of the director, comply with this article. This article shall not apply to a contract or other arrangement of a health care service plan that offers benefits under Section 1395mm of Title 42 of the United States Code or under a demonstration project authorized pursuant to amendments to the federal Social Security Act. This article shall not apply to a contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

As used in this chapter, "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, Title 1, Part 1 of Public Law 89-97, enacted by the 89th United States Congress; as then constituted or as later amended.

SEC. 71. Section 1358.1 of the Health and Safety Code is amended to read:

1358.1. A plan offering contracts to supplement Medicare shall do all of the following:

(a) Meet the minimum benefit standards as established by the director.

(b) Provide an examination period of 30 days after the receipt of the contract for purposes of review of the contract at which time the applicant may return the contract. The return shall void the contract from the beginning, and the parties shall be in the same position as if no policy or contract had been issued. All premiums paid and any

policy fee paid for the policy shall be fully refunded to the owner by the plan in a timely manner.

(1) Each plan contract or certificate shall have a notice prominently printed in no less than 10-point upper case type, on the cover page of the plan contract or certificate or attached thereto, and on the cover page of the outline of coverage, stating that the applicant has the right to return the plan contract or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

(2) For purposes of this section, a timely manner shall be no later than 30 days after the plan or entity issuing the contract or certificate receives the returned contract or certificate.

(3) If the plan or entity issuing the contract or certificate fails to refund all premiums paid in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the plan or entity received the returned contract or certificate.

(c) Explain the relationship of the coverage under the contract to the benefits provided by Medicare.

(d) Not be limited to coverage exclusively for a single disease or affliction.

(e) If the plan contract or policy does not cover custodial care, the cover page of the outline of coverages required by subdivision (c) shall contain the following statement in upper case type: "THIS POLICY DOES NOT COVER CUSTODIAL CARE IN A SKILLED NURSING CARE FACILITY."

SEC. 72. Section 1358.2 of the Health and Safety Code is amended to read:

1358.2. (a) The disclosure form required pursuant to Section 1363 and applicable regulations, if it relates to a contract that primarily or solely supplements Medicare, with hospital or medical coverage shall also set forth the following information in the format indicated:

(1) With the information required by paragraph (1) of subdivision (b) of Section 1300.63 of Title 10 of the California Code of Regulations, conspicuously identify, on the first page of the disclosure form immediately under the plan name, the disclosure form as being for the plan's Medicare supplement contract.

(2) If the Medicare supplement contract is issued on a basis not identical to that described in the disclosure form previously provided, a corrected disclosure form shall also be provided in accordance with Section 1363 when the contract is delivered and shall contain the following statement, in no less than 12-point type on the first page, immediately above the company name:

"NOTICE: Read this disclosure form carefully. It is not identical to the disclosure form previously provided and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section shall consist of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the plan.

The cover page shall include the items, in the same order, specified in the chart set forth in paragraph (4) of subdivision (C) of Section 16 of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991. All benefit plans "A" through "J" shall be shown on the cover page, and the plan or plans that are offered by the plan shall be prominently identified.

All possible charges for benefit plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. All possible charges shall be stated for all benefit plans that are offered to the prospective applicant. All possible charges for the prospective applicant shall be illustrated.

The disclosure pages shall be in the language and format described below in no less than 12-point type.

PREMIUM INFORMATION

[Insert plan's name] can only raise your premium if it raises the premium for all contracts like yours in this state. [If the premium is based on the increasing age of the enrollee, include information specifying when premiums will change.]

DISCLOSURES

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY

This is only an outline describing the most important features of your Medicare supplement plan contract. This is not the plan contract and only the actual contract provisions will control. You must read the contract itself to understand all of the rights and duties of both you and [insert the health care service plan's name].

RIGHT TO RETURN POLICY

If you find that you are not satisfied with your contract, you may return it to [insert plan's address]. If you send the contract back to us within 30 days after you receive it, we will treat the contract as if it had never been issued and return all of your payments.

POLICY REPLACEMENT

If you are replacing other health coverage, do NOT cancel it until you have actually received your new contract and are sure you want to keep it.

NOTICE

This contract may not fully cover all of your medical costs. Neither [insert the health care service plan's name] nor its agents are connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "The Medicare Handbook" for further details and limitations applicable to Medicare.

COMPLETE ANSWERS ARE VERY IMPORTANT

When you fill out the application for the new contract, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your contract and refuse to pay any claims if you leave out or falsify important medical information. [If the contract is guaranteed issue, this paragraph need not appear.] Review the application carefully before you sign it. Be certain that all information has been properly recorded. [The charts displaying the features of each benefit plan offered by the plan shall use the uniform format and language shown in the charts set forth in Section 16 of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991. No more than four benefit plans may be shown on one chart. For purposes of illustration, charts for each benefit plan are set forth below. A plan may use additional benefit plan designations on these charts.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the director.]

(b) Notwithstanding Section 1300.63.2 of Title 10 of the California Code of Regulations, no plan shall combine the evidence of coverage and disclosure form into a single document relating to a contract that supplements Medicare, or is advertised or represented as a supplement to Medicare, with hospital or medical coverage.

(c) Notwithstanding this section, a plan shall not be required to comply with this section with respect to any group contract that is any of the following:

(1) A group contract with one or more employers or labor organizations, or trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or combination thereof or for

members or former members, or combination thereof, of the labor organizations.

(2) A group contract with any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association is composed of individuals all of whom are actively engaged in the same profession, trade or occupation, has been maintained in good faith for purposes other than obtaining health coverage, and has been in existence for at least two years prior to the date of its initial offering of the contract to its members.

SEC. 73. Section 1358.4 of the Health and Safety Code is amended to read:

1358.4. (a) In the interest of full and fair disclosure, and to assure the availability of necessary consumer information to potential subscribers or enrollees not possessing a special knowledge of Medicare, health care service plans, and Medicare supplement contracts, a health care service plan offering contracts to supplement Medicare shall comply with the provisions of subdivision (b).

(b) The application form or other consumer information for persons eligible for Medicare and used by a plan described in subdivision (a) shall contain as an attachment a Medicare supplement buyer's guide in the form approved by the director. The application or other consumer information, containing as an attachment the buyer's guide, shall be mailed or delivered to each person applying for that coverage at or before the time of application and, to establish compliance with this subdivision, the plan shall obtain an acknowledgment of receipt of the attached buyer's guide from each applicant. No plan shall make use of or otherwise disseminate any buyer's guide that does not accurately outline current Medicare benefits. No plan shall be required to provide more than one copy of the buyer's guide to any applicant.

(c) A plan may comply with the requirement of this section in the case of group contracts by causing the group contractholder (1) to disseminate copies of the disclosure form containing as an attachment the buyer's guide to all persons eligible under the group contract at the time those persons are offered the plan, and (2) collecting and forwarding to the plan an acknowledgment of receipt of the disclosure form containing as an attachment the buyer's guide from each person described in paragraph (1).

(d) Notwithstanding the provisions of this section, a plan shall not be required to comply with the provisions of this section with respect to any group contract that is any of the following:

(1) A group contract with one or more employers or labor organizations, or trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees, or former employees or combination thereof, or for members or former members, or combination thereof, of the labor organizations.

(2) A group contract with any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association is composed of individuals all of whom are actively engaged in the same profession, trade or occupation, has been maintained in good faith for purposes other than obtaining health coverage, and has been in existence for at least two years prior to the date of its initial offering of the contract to its members.

SEC. 74. Section 1358.6 of the Health and Safety Code is amended to read:

1358.6. (a) On or before March 1 of each year, a health care service plan offering contracts to supplement Medicare, shall report to the director the following information for every individual resident of this state for which the plan has in force more than one Medicare supplement contract:

(1) Contract name.

(2) Date of Issuance.

(b) The items set forth above shall be grouped by enrollee.

SEC. 75. Section 1358.9 of the Health and Safety Code is amended to read:

1358.9. (a) A contract offered to supplement Medicare shall be deemed not to be fair, just, or consistent with the objectives of the Knox-Keene Health Care Service Plan Act of 1975 at all times, and shall not be advertised, solicited for, entered, or renewed at any time, except during that period of time, if any, beginning with the date of receipt by the plan of notification by the director that the provisions of the contract are deemed to be fair, just, and consistent with the objectives of this chapter, and ending with the earlier to occur of the events indicated in subdivision (b).

(b) The period of time indicated in subdivision (a) shall terminate at the earlier to occur of (1) receipt by the plan of written revocation by the director of the immediate past notification referred to in subdivision (a) specifying the basis for the revocation, (2) the last day of the prepaid or periodic charge calculation period, that in no event may exceed one year, or (3) June 30, of the next succeeding calendar year.

(c) A plan shall secure the director's review of a plan contract subject to this article by submitting, not less than 30 days prior to any proposed advertising or other use of the plan contract not already protected by a currently effective notice under subdivision (a), the following for the director's review:

(1) A copy of the plan contract.

(2) A copy of the disclosure form.

(3) A representation that the plan contract complies with the provisions of this chapter and the rules adopted thereunder.

(4) A completed copy of the "Medicare Supplement Health Care Service Plan Contract Experience Exhibit" set forth in Section 1358.17.

(5) A copy of the calculations for the actual or expected loss ratio.

(6) Supporting data used in calculating the actual or expected loss ratio as indicated in Section 1358.11.

(7) An actuarial certification, as specified in Section 1358.11 of the loss ratio computations.

(8) If required by the director, actuarial certification, as specified in Section 1358.11, of the loss ratio computations by one or more unaffiliated actuaries acceptable to the director.

(9) An undertaking by the plan to notify the subscribers in writing within 60 days of decertification, if the contract is identified as a certified contract at the time of sale and later decertified.

(10) A signed statement of the president of the plan or other officer of the plan designated by that person attesting that the information submitted for review is accurate and complete and does not misrepresent any material fact.

(d) A plan that submits information pursuant to subdivision (c) shall provide such additional information as may be requested by the director to enable the director to conclude that the plan contract complies with the provisions of this chapter and rules adopted thereunder.

(e) For the purposes of this section, the term "decertified," as applied to a plan contract, means that the director by written notice has found that the contract no longer complies with the provisions of this chapter and the rules adopted thereunder and has revoked the prior authorization to display on the plan contract the emblem indicating certification.

(f) Notwithstanding the other provisions of the section, this section shall not apply to any group contract that is all of the following:

(1) A group contract with one or more employers or labor organizations, or of the trustee of a fund established by one or more employers or labor organizations, or combination thereof, for employees, or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization.

(2) A group contract with any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation, has been maintained in good faith for purposes other than obtaining health coverage, and has been in existence for at least two years prior to the date of its initial offering of the contract to its members.

SEC. 76. Section 1358.10 of the Health and Safety Code is amended to read:

1358.10. (a) No plan subject to this article may advertise, solicit for, enter, or renew any plan contract that primarily or solely supplements Medicare, or is advertised or represented as a

supplement to Medicare, with hospital or medical coverage if the contract contains any of the prohibited provisions described in subdivision (b), does not contain any of the mandatory provisions described in subdivision (c), or does not conform to the requirements set forth in subdivision (d). No plan contract that primarily or solely supplements Medicare shall contain benefits that duplicate benefits provided by Medicare.

(b) The following provisions shall be deemed to be unfair, unreasonable, and inconsistent with the objectives of this chapter and shall not be contained in any plan contract subject to subdivision (a):

(1) Any waiver, exclusion, limitation, or reduction based on or relating to a preexisting disease or physical condition, unless that waiver, exclusion, limitation, or reduction (A) applies only to coverage for specified services rendered not more than six months from the effective date of coverage, (B) is based on or relates only to a preexisting disease or physical condition defined no more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage, (C) does not apply to any coverage under any group contract, and (D) is approved in advance by the director. Any limitations with respect to a preexisting condition shall appear as a separate paragraph of the contract and be labeled "Preexisting Condition Limitations."

(2) Any provision delaying the effective date of coverage beyond the first day of the month following the date of receipt by the plan of the applicant's properly completed application, except that the effective date of coverage may be delayed until the 65th birthday of an applicant who is to become eligible for Medicare by reason of age if the application is received any time during the three months immediately preceding the applicant's 65th birthday.

(3) Any distinction in coverage based on whether health care services are provided because of illness or injury.

(4) The terms "Medicare supplement," "Medicare Wrap-Around," or terms of similar import to characterize a plan contract, unless the contract is in compliance with the provisions of this chapter and this article. The term "medigap," shall not be used.

(5) Any provision allowing termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the subscriber, other than the nonpayment of the prepaid or periodic charge.

(6) Except with respect to a group contract subject to and in compliance with Section 1399.62, any provision denying coverage, after termination of the contract, for services provided continuously beginning while the contract was in effect, during the continuous total disability of the subscriber or enrollee, except that the coverage may be limited to a reasonable period of time not less than the duration of the contract benefit period, if any, and may be limited to the maximum benefits provided under the contract.

(7) Any definition, condition, limitation, exclusion, reduction, or other provision that is inconsistent with or more restrictive or limiting than that term as officially used in Medicare, except as expressly authorized in this chapter.

(c) A plan contract shall be deemed to be unfair, unreasonable, and inconsistent with the objectives of this chapter and shall not be advertised, solicited for, entered, or renewed unless it contains the following mandatory provisions:

(1) Prominently printed on the first page of the contract, a notice stating in substance that the subscriber or enrollee shall have the right to return the contract within 30 days of its delivery and to have the prepaid or periodic charge refunded if, after examination of the contract, the covered person is not satisfied for any reason.

(2) Appropriately captioned, and appearing on the first page of the contract, a provision regarding renewal or continuation. The provision shall be consistent with subdivision (a) of Section 1365 and the rules adopted thereunder and shall include any reservation by the plan of the right to change prepaid or periodic charges and any automatic renewal increases based on the enrollee's age.

(3) Benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors and the amount of prepaid charges may be modified, as indicated in paragraph (6) of subdivision (a) of Section 1300.67.4 of the California Code of Regulations, to correspond with those changes.

(4) The health care service plan shall not in any way reduce or eliminate any benefit or coverage under a Medicare supplement contract at any time after the date of entering the contract, including dates of reinstatement or renewal, unless and until the change is voluntarily agreed to in writing signed by the subscriber or enrollee, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits. The health care service plan shall not increase benefits or coverage with a concomitant increase in prepaid or periodic charges during the term of the contract unless and until the change is voluntarily agreed to in writing signed by the subscriber or enrollee or unless the increased benefits or coverage is required by law or regulation.

(5) A plan contract shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(6) The plan contract shall contain the provisions required to be set forth in the plan contract by Section 1300.67.4 of the California Code of Regulations.

(d) A plan contract subject to subdivision (a) shall be deemed to be unfair, unreasonable, and inconsistent with the objectives of this chapter and shall not be advertised, solicited for, entered, or renewed

unless the contract contains definitions of terms in compliance with the following requirements:

(1) "Accident," "accidental injury," or "accidental means," if defined, shall be defined without including words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization. The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided," means accidental bodily injury sustained by the covered person.

(2) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

(3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the federal Medicare program.

(4) "Health care expenses" may include expenses associated with the delivery of health care services, but shall not include (A) home office and overhead costs, (B) advertising costs, (C) commissions and other acquisition costs, (D) taxes, (E) capital costs, (F) administrative costs, or (G) claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals but not more restrictively than as defined in the federal Medicare program.

(6) "Medicare" shall be defined in the contract. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or "Title I, Part I of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(7) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

(8) "Physician" shall not be defined more restrictively than as defined in the federal Medicare program.

(9) "Sickness," if defined, shall not be defined to be more restrictive than the following: "Sickness means illness or disease of a covered person."

(e) Nothing in this section shall be construed as prohibiting any plan contract, by definitions or express provisions, from limiting or restricting any or all of the benefits provided under the contract, except in-area and out-of-area emergency services, to those health care services that are delivered by plan employed, owned, or contracting providers and provider facilities, so long as the plan contract complies with the provisions of Sections 1367 and 1358.11 and with Section 1300.67 of the California Code of Regulations.

(f) Nothing in this section shall be construed as prohibiting any plan contract that limits or restricts any or all of the benefits provided under the contract in the manner contemplated in subdivision (e) from limiting its obligation to deliver services, and disclaiming any liability from any delay or failure to provide those services (1) in the event of a major disaster or epidemic or (2) in the event of circumstances not reasonably within the control of the plan, such as the partial or total destruction of facilities, war, riot, civil insurrection, disability of a significant part of its health personnel, or similar circumstances so long as the provisions comply with the provisions of subdivision (h) of Section 1367.

SEC. 77. Section 1358.11 of the Health and Safety Code is amended to read:

1358.11. (a) No plan subject to this article may advertise, solicit for, enter, or renew any plan contract that primarily or solely supplements Medicare, or is advertised or represented as a supplement to Medicare, with hospital or medical coverage unless the contract returns to the subscribers and enrollees in the form of aggregate benefits under the contract, not including anticipated refunds or credits, as estimated for the entire period for which prepaid or periodic charges are computed to provide coverage, on the basis of incurred claims or costs of health care services experience and earned prepaid or periodic charges for that period and in accordance with accepted actuarial principles and practices:

(1) At least 75 percent of the aggregate amount of prepaid or periodic charges collected in the case of group contracts.

(2) At least 65 percent of the aggregate amount of prepaid or periodic charges collected in the case of individual contracts.

(b) The calculation of actual or expected loss ratios shall be pursuant to that formula, definitions, procedures, and other provisions as may be deemed by the director, with due consideration of the circumstances of the particular plan, to be fair, reasonable, and consistent with the objectives of this chapter. These loss ratios shall also apply to prestandardized plan contracts and certificates issued prior to July 21, 1992, the date mandated for standardized Medicare supplement coverage by the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508).

(c) Each plan subject to subdivision (a) shall submit to the department a copy of the calculations for the actual or expected loss ratio as required by Section 1358.9. The calculations shall include the following data: the actual loss ratio for the entire period in which the plan contract has been in force, as well as for the immediate past three years and for each year in which the plan contract has been in force; the scale of prepaid or periodic charges for the loss ratio calculation period, a description of all assumptions, the formula used to calculate gross prepaid or periodic charges, the expected level of earned prepaid or periodic charges in the loss ratio calculation period, and the expected level of incurred claims for reimbursement,

including paid claims and incurred but not paid claims, in the loss ratio calculation period. The calculations shall be accompanied by an actuarial certification, consisting of a signed declaration of an actuary who is a member in good standing of the American Academy of Actuaries in which the actuary states that the assumptions used in calculating the expected loss ratio are appropriate and reasonable, taking into account that the calculations are in accordance with the provisions of subdivision (b) and the provisions referred to therein. In addition, the director may require the plan to submit actuarial certification, as described above, by one or more unaffiliated actuaries acceptable to the director.

(d) Notwithstanding the calculations required by subdivision (c), plan contracts shall be deemed to comply with the loss ratio standards if, and shall be deemed not to comply with the loss standards unless: (1) for the most recent year, the ratio of the incurred losses to earned prepaid charges for contracts that have been in force for three years or more is greater than or equal to the applicable percentages contained in this section; and (2) the expected losses in relation to premiums over the entire period for which the contract is rated comply with the requirements of this section. An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for contracts in force less than three years.

(e) Notwithstanding the provisions of this section, this section shall not apply to any group contract that is either:

(1) A group contract with one or more employers or labor organizations, or trustees of a fund established by one or more employers or organizations, or combination thereof, for employees or former employees or combination thereof or for members or former members, or combination thereof, of the labor organizations.

(2) A group contract with any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association is composed of individuals all of whom are actively engaged in the same profession, trade or occupation, has been maintained in good faith for purposes other than obtaining health coverage, and has been in existence for at least two years prior to the date of its initial offering of the contract to its members.

(f) For contracts issued prior to July 21, 1992, expected claims in relation to premiums shall meet all of the following:

(1) The originally filed anticipated loss ratio when combined with the actual experience since July 21, 1992.

(2) The appropriate percentage from paragraphs (1) and (2) of subdivision (a) when combined with actual expenses on or after the effective date of this act.

(3) The appropriate percentage from paragraphs (1) and (2) of subdivision (a) over the entire future period for which rates are computed to provide coverage on or after the effective date of this act.

SEC. 78. Section 1358.12 of the Health and Safety Code is amended to read:

1358.12. (a) To comply with federal law (P.L. 101-508, Section 4351) a plan shall, for each Medicare supplement contract it offers, collect and file with the director by May 31, of each year the data contained in the reporting form contained in Appendix A of the Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991.

(b) If on the basis of the experience as reported the bench mark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each Medicare supplement contract offered by the plan. For purposes of the refund or credit calculation, experience on contracts issued within the reporting year shall be excluded.

(c) A refund or credit shall be made only when the bench mark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds ten dollars ($10). The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury Notes. A refund or credit against prepaid or periodic charges due shall be made by September 30 following the experience year upon which the refund or credit is based.

(d) The director may conduct a public hearing to gather information if the experience of the form filed under subdivision (a) for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the director.

SEC. 79. Section 1358.14 of the Health and Safety Code is amended to read:

1358.14. (a) Every plan shall, by June 30 of each year, file with the director a list of its Medicare supplement plan contracts offered or issued or outstanding in this state as of the end of the previous calendar year.

(b) The list shall identify the filing plan by name and address, shall identify each type of contract it offers by name and form number, if one is used, and shall differentiate between contracts filed with and approved by the director in years prior to the previous calendar year, and those filed and approved in the previous calendar year.

(c) The list shall specifically identify all of the following:

(1) Contracts that are issued and outstanding in this state but are no longer offered for sale.

(2) Contracts that, for any reason, were not filed and approved by the director.

(3) Contracts for which the director's approval was withdrawn within the previous calendar year.

(d) The director shall, on or before the first day of September of each year provide the Secretary of Health and Human Services with a list identifying each plan contract by name and address and the information required to be submitted by this section.

SEC. 80. Section 1358.15 of the Health and Safety Code is amended to read:

1358.15. (a) Within 30 days prior to the effective date of any Medicare benefit changes, a plan providing Medicare supplement contracts to a resident of this state shall file with the director, and notify its contract holders of, modifications it has made to Medicare supplement contracts.

(1) The notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement contract.

(2) The notice shall inform each subscriber and enrollee as to when any adjustment in the prepaid or periodic charges will be made due to changes in Medicare benefits.

(3) The notice of benefit modifications and any adjustments to the prepaid or periodic charges shall be in outline form and in clear and simple terms so as to facilitate comprehension. The notice shall not contain or be accompanied by any solicitation.

(b) No modifications to existing Medicare supplement coverage shall be made at the time of, or in connection with the notice requirements of this regulation except to the extent necessary to eliminate duplication of Medicare benefits and any modifications necessary under the contract to provide indexed benefit adjustment.

(c) As soon as practicable, but prior to the effective date of changes in Medicare benefits a plan providing Medicare supplement contracts in this state shall file the following with the director:

(1) Appropriate prepaid or periodic charge adjustments necessary to produce loss ratios as anticipated for the current prepaid or periodic charges for the applicable contracts. Those supporting documents as are necessary to justify the adjustment shall accompany the filing.

(2) Any appropriate contract amendments needed to accomplish the Medicare supplement coverage modifications necessary to eliminate benefit duplications with Medicare. Any such contract amendments shall provide a clear description of the Medicare supplement benefits provided by the contract.

(d) Upon satisfying the filing and approval requirements of the director, a plan providing Medicare supplement coverage in this state shall provide each subscriber or enrollee with any contract amendment necessary to eliminate any benefit duplications under the contract with benefits provided by Medicare.

(e) Every plan providing Medicare supplement coverage to a resident of this state shall make those prepaid or periodic charge adjustments as are necessary to produce an expected loss ratio under the contract as will conform with minimum loss ratio standards for Medicare supplement contracts and that is expected to result in a loss ratio at least as great as that originally anticipated. No prepaid or periodic charge adjustment that would modify loss ratio experience, other than the adjustments described herein, shall be made at any time other than upon the renewal date.

SEC. 81. Section 1358.16 of the Health and Safety Code is amended to read:

1358.16. (a) A plan offering Medicare supplement coverage shall, as a condition precedent to the director's approval or continued approval of Medicare supplement contracts offered in this state, agree to accept and shall accept a notice under Section 1842(h)(3)(B) of the Social Security Act (42 U.S.C. Sec. 1395u(h)(3)(B)) as a claim form for benefits under those contracts in lieu of any claim form otherwise required, and shall agree to make a payment determination and shall make that determination on the basis of the information contained in or accompanying the notice.

(b) As further conditions precedent to the approval or continued approval of Medicare supplement contracts, a plan offering Medicare supplement coverage in this state shall do all of the following:

(1) When a notice under Section 1842(h)(3)(B) of the Social Security Act (42 U.S.C. Sec. 1395u(h)(3)(B)) is received:

(A) Provide written notice of the payment determination to the participating physician or supplier and assignor.

(B) Provide any payment due directly to the participating physician or supplier involved.

(2) Provide each subscriber and enrollee at the time coverage is initiated, a card listing the contract name and number and a single mailing address to which notices under Section 1842(h)(3)(B) of the Social Security Act (42 U.S.C. Sec. 1395u(h)(3)(B)) respecting coverage are to be sent.

(3) Pay any user fees established under Section 1842(h)(3)(B) of the Social Security Act (42 1395u(h)(3)(B)).

(4) Provide the Secretary of Health and Human Services at least annually, a single mailing address to which notices under Section 1842(h)(3)(B) (42 U.S.C. Sec. 1395u(h)(3)(B)) are to be sent.

SEC. 82. Section 1358.18 of the Health and Safety Code is amended to read:

1358.18. In compliance with the Medicare supplement coverage standardization requirements of Section 1882 of the Social Security Act (42 U.S.C.A. Sec. 1395ss), as added by the Omnibus Reconciliation Act of 1990 (P.L. 101-508), the following standards are applicable to all Medicare supplement contracts subject to this article delivered or issued for delivery on or after the effective date of this

section. No contract may be advertised, solicited, offered, or issued for delivery in this state as a Medicare supplement contract unless it complies with these benefit standards, as well as all other requirements under this chapter. The basic health care services required to be provided pursuant to Sections 1345 and 1367 of this chapter shall not be included in Medicare supplement contracts subject to this article, to the extent that California is required to disallow coverage for these health care services under the federal Medicare supplement standardization requirements set forth in Section 1882 of the Social Security Act (42 U.S.C.A. 1395ss).

(a) (1) All Medicare supplement contracts shall be guaranteed renewable. A plan shall not cancel or nonrenew a contract solely on the ground of the health status of the individual. A plan shall not cancel or nonrenew a contract for any reason other than nonpayment of the prepaid or periodic charge or misrepresentation of the risk by the applicant that is shown by the plan to be material to the acceptance for coverage. The contestability period for Medicare supplement contracts shall be two years.

(2) Termination of a Medicare supplement contract shall be without prejudice to any continuous loss that commenced while the contract was in force, but the extension of benefits beyond the period during which the contract was in force may be conditioned upon the continuous total disability of the subscriber or enrollee, limited to the duration of the contract benefit period, if any, or limited to the maximum benefits provided under the contract.

(3) A Medicare supplement contract shall provide that benefits and prepaid or periodic charges under the contract shall be suspended at the request of the subscriber or enrollee for the period (not to exceed 24 months) in which the subscriber or enrollee has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the subscriber or enrollee notifies the plan of that contract within 90 days after the date the individual becomes entitled to that assistance. Upon receipt of timely notice, the plan shall return to the subscriber or enrollee that portion of the prepaid or periodic charge attributable to the period of medicaid eligibility.

If the suspension occurs and if the subscriber or enrollee loses entitlement to that medical assistance, the contract shall be automatically reinstituted, effective as of the date of termination of entitlement, if the subscriber or enrollee provides notice of loss of the entitlement within 90 days after the date of the loss and pays the prepaid or periodic charge attributable to the period, effective as of the date of termination of entitlement. Reinstitution of coverage shall not provide for any waiting period with respect to treatment of preexisting conditions. The reinstitution coverage shall be substantially equivalent to coverage in effect before the date of the suspension. When coverage is reinstituted the classification of prepaid or periodic charges shall be on terms at least as favorable to

the subscriber or enrollee as the prepaid or periodic charge classification terms that would have applied to the subscriber or enrollee had the coverage not been suspended.

(b) Any plan contract that primarily or solely supplements Medicare, or is advertised or represented as a supplement to Medicare, shall include the following "core" package of benefits. This "core" package of benefits shall be referred to as standardized Medicare supplement benefit plan "A". A plan may make available to prospective subscribers and enrollees any of the other standardized Medicare supplement benefit plans in addition to the basic "core" package, but not in lieu thereof.

(1) Coverage of Part A Medicare Eligible Expenses for incurred hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A Eligible Expenses for hospitalization not covered by Medicare, subject to a lifetime maximum benefit of an additional 365 days.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(c) Plans may also make available any of the other standardized Medicare supplement benefit plans set forth below in addition to the basic "core" package, but not in lieu thereof. No groups, packages, or combinations of Medicare supplement benefits other than the standardized Medicare supplement benefit plans listed in this subdivision shall be offered for sale in this state, except as may be permitted. Benefit plans shall conform in structure, language, designation, and format to the standard benefit plans "A" through "J" listed in this section. The benefits shall be listed in the order shown in this section. For purposes of this section, "structure, language, and format" mean style, arrangement, and overall content of a benefit.

(d) In addition to the standardized Medicare supplement benefit plan "A", the nine other standardized benefit plans that may be offered are defined as follows:

(1) Standardized Medicare supplement benefit plan "B" shall include only the following: the Core Benefit as defined in subdivision (b) plus the Medicare Part A Deductible as defined in paragraph (1) of subdivision (e).

(2) Standardized Medicare supplement benefit plan "C" shall include only the following: the Core Benefit as defined in subdivision

(b) plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country as defined in paragraphs (1), (2), (3), and (8) of subdivision (e), respectively.

(3) Standardized Medicare supplement benefit plan "D" shall include only the following: the Core Benefit as defined in subdivision (b) plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and the At-Home Recovery Benefit as defined in paragraphs (1), (2), (8), and (10) of subdivision (e), respectively.

(4) Standardized Medicare supplement benefit plan "E" shall include only the following: the Core Benefit as defined in subdivision (b) plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in paragraphs (1), (2), (8), and (9) of subdivision (e), respectively.

(5) Standardized Medicare supplement benefit plan "F" shall include only the following: the Core Benefit as defined in subdivision (b) plus the Medicare Part A Deductible, the Skilled Nursing Facility Care, the Part B Deductible, 100 Percent of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country, as defined in paragraphs (1), (2), (3), (5), and (8) of subdivision (e), respectively.

(6) Standardized Medicare supplement benefit plan "G" shall include only the following: the Core Benefit as defined in subdivision (b) plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 80 Percent of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefit as defined in paragraphs (1), (2), (4), (8), and (10) of subdivision (e), respectively.

(7) Standardized Medicare supplement benefit plan "H" shall consist of only the following: the Core Benefit as defined in subdivision (b) plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Outpatient Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country, as defined in paragraphs (1), (2), (6), and (8) of subdivision (e), respectively.

(8) Standardized Medicare supplement benefit plan "I" shall consist of only the following: the Core Benefit as defined in subdivision (b) plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 100 Percent of the Medicare Part B Excess Charges, Basic Outpatient Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit, as defined in paragraphs (1), (2), (5), (6), (8), and (10) of subdivision (e), respectively.

(9) Standardized Medicare supplement benefit plan "J" shall consist of only the following: the Core Benefit as defined in subdivision (b) plus the Medicare Part A Deductible, Skilled Nursing

Facility Care, Medicare Part B Deductible, 100 Percent of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit, as defined in paragraphs (1), (2), (3), (5), (7), (8), (9), and (10) of subdivision (e), respectively.

(e) The terms used in the standardized Medicare supplement benefit plans described in subdivision (d) are defined as follows:

(1) "Medicare Part A Deductible" means coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) "Skilled nursing facility care" means coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) "Medicare Part B Deductible" means coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) "Eighty Percent of the Medicare Part B Excess Charges" means coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) "One Hundred Percent of the Medicare Part B Excess Charges" means coverage for all of the differences between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) "Basic Outpatient Prescription Drug Benefit" means coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars ($1,250) in benefits received by the enrollee per calendar year, to the extent not covered by Medicare.

(7) "Extended Outpatient Prescription Drug Benefit" means coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible to a maximum of three thousand dollars ($3,000) in benefits received by the enrollee per calendar year, to the extent not covered by Medicare.

(8) "Medically Necessary Emergency Care in a Foreign Country" means coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty

dollars ($250), and a lifetime maximum benefit of fifty thousand dollars ($50,000).

(9) "Preventive Medical Care Benefit" means coverage for the following preventive health services:

(A) An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph (B) and patient education to address preventive health care measures.

(B) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(i) Fecal occult blood test or digital rectal examination or both.

(ii) Mammogram.

(iii) Dipstick urinalysis for hematuria, bacteriuria, and proteinuria.

(iv) Pure tone, air only, hearing screening test, administered or ordered by a physician.

(v) Serum cholesterol screening every five years.

(vi) Thyroid function test.

(vii) Diabetes screening.

(C) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster every 10 years.

(D) Any other tests or preventive measures determined appropriate by the attending physician. Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars ($120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) "At-Home Recovery Benefit" means coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(A) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" means any place used by the enrollee as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the enrollee's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(B) The following coverage limitations apply to this benefit:

(i) The actual charges for each visit up to a maximum reimbursement of forty dollars ($40) per visit, not to exceed one thousand six hundred dollars ($1,600) per calendar year.

(ii) A plan may require that the at-home recovery services, including the number of visits, frequency and the type of services, be certified by an attending physician as necessary for a condition for which Medicare has approved a home health care plan. The total number of at-home recovery visits may be limited to the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment. The number of visits per week may be limited to seven visits.

(iii) A plan may require that all at-home recovery visits for a particular Medicare benefit period must be used within an eight-week period following the last Medicare-approved home health care visit.

(C) Coverage is excluded for any of the following:

(i) Home care visits paid for by Medicare or other government programs.

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

(f) A plan may, with the prior approval of the director, offer Medicare supplement contracts with new or innovative benefits in addition to the benefits required under this section. The benefits may include benefits that are appropriate to Medicare supplement coverage, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement contracts consistent with this chapter.

SEC. 83. Section 1358.19 of the Health and Safety Code is amended to read:

1358.19. The director may authorize a plan to offer Medicare Select contracts pursuant to Section 4358 of the Omnibus Budget Reconciliation Act ("OBRA") of 1990 if the director finds that the plan's Medicare supplement contracts are in compliance with the Knox-Keene Act, including the following additional requirements for Medicare Select contracts:

(a) A Medicare Select plan shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select contract to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and charges of the Medicare Select contract with the following:

(A) Other Medicare supplement contracts, policies, or certificates offered by the plan and its affiliates.

(B) Medicare select policies, contracts, and certificates offered by other companies.

(2) A description, including address, phone number and hours of operation, of the providers contracting with the plan, including primary care physicians, specialty physicians, hospitals, and pharmacies.

(3) A description of the restricted provider provisions, including charges when providers other than those contracting with the plan are utilized.

(4) A description of coverage for emergency and urgently needed care and out-of-service area coverage.

(5) A description of covered services that require a referral by a plan provider or plan preauthorization.

(6) A description of the subscriber or enrollees' rights to purchase any other Medicare supplement contract otherwise offered by the plan.

(7) A description of the Medicare Select plan's quality of care review program and grievance procedure.

(b) Prior to the sale of a Medicare Select contract, a plan shall obtain from the applicant a signed and dated form stating that the applicant has received the information required to be provided pursuant to subdivision (a) and that the applicant understands the restrictions of the Medicare Select contract.

(c) At the time of initial purchase, a Medicare Select plan shall make available to each applicant for a Medicare Select contract the opportunity to purchase any Medicare supplement contract, policy, or certificate otherwise offered by the plan or its affiliates.

(1) At the request of an enrollee under a Medicare Select contract, a Medicare Select plan shall make available to the enrollee the opportunity to purchase a Medicare supplement contract offered by the plan which has comparable or lesser benefits and which does not contain a restricted provider network provision, if any such Medicare Select contract is offered by the plan. The plan shall make those contracts available without regard to the health status of the enrollee after the Medicare supplement contract has been in force for six months.

(2) For the purposes of this subdivision, a Medicare supplement contract will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select contract being replaced. For the purposes of this paragraph "significant benefit" means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

(d) Medicare Select contracts shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select contracts, policies, and certificates

issued pursuant to this section should be discontinued due to either the failure of the Medicare Select program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each enrollee under a Medicare Select plan the opportunity to purchase a Medicare supplement contract offered by the plan which has comparable or lesser benefits and which does not contain a restricted provider network provision, if any such Medicare supplement contract is offered by the plan. The plan shall make those contracts available without regard to the health status of the enrollee after the Medicare supplement contract has been in force for six months.

(2) For the purposes of this subdivision, a Medicare supplement contract will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select contract being replaced. For the purposes of this paragraph "significant benefit" means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

(e) A plan offering Medicare Select contracts shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select program. A Medicare Select plan shall not issue a Medicare Select contract in this state until the contract has been approved by the director.

SEC. 84. Section 1358.21 of the Health and Safety Code is amended to read:

1358.21. (a) A plan may discontinue the availability of a Medicare supplement contract if the plan provides to the director in writing its decision at least 60 days prior to discontinuing the availability of the contract. After receipt of the notice by the director, the plan shall no longer offer for sale the contract in this state. A contract shall not be considered to be available for purchase unless the plan has actively offered it for sale in the previous 12 months.

(b) A plan that discontinues the availability of a contract pursuant to subdivision (a) shall not file for approval a new contract of the same type for the same standardized Medicare supplement benefit plan as the discontinued contract for a period of five years after the plan provides notice to the director of the discontinuance. The period of discontinuance may be reduced if the director determines that a shorter period is appropriate.

(c) The sale or other transfer of Medicare supplement business to another company shall be considered a discontinuance for the purpose of this section.

SEC. 85. Section 1359 of the Health and Safety Code is amended to read:

1359. (a) The director may require that solicitors and solicitor firms, and principal persons engaged in the supervision of solicitation for plans of solicitor firms, meet such reasonable and appropriate

standards with respect to training, experience, and other qualifications as the director finds necessary and appropriate in the public interest or for the protection of subscribers, enrollees, and plans. For such purposes, the director may do the following:

(1) Appropriately classify such persons and individuals.

(2) Specify that all or any portion of such standards shall be applicable to any such class.

(3) Require individuals in any such class to pass examinations prescribed in accordance with such rules.

(b) The director may prescribe by rule reasonable fees and charges to defray the costs of carrying out this section, including, but not limited to, fees for any examination administered by the director or under his or her direction.

SEC. 86. Section 1360.1 of the Health and Safety Code is amended to read:

1360.1. It is unlawful for any person, including a plan, subject to this chapter to represent or imply in any manner that the person or plan has been sponsored, recommended, or approved, or that the person's or plan's abilities or qualifications have in any respect been passed upon, by the director. Nothing in this section prohibits a statement (other than in a paid advertisement) that a person or plan holds a license under this chapter, if such statement is true and if the effect of such licensing is not misrepresented.

SEC. 87. Section 1361 of the Health and Safety Code is amended to read:

1361. (a) Except as provided in subdivision (b), no plan shall publish or distribute, or allow to be published or distributed on its behalf, any advertisement not subject to Section 1352.1 unless (1) a true copy thereof has first been filed with the director, at least 30 days prior to any such use, or any shorter period as the director by rule or order may allow, and (2) the director by notice has not found the advertisement, wholly or in part, to be untrue, misleading, deceptive, or otherwise not in compliance with this chapter or the rules thereunder, and specified the deficiencies, within the 30 days or any shorter time as the director by rule or order may allow.

(b) Except as provided in subdivision (c), a licensed plan which has been continuously licensed under this chapter for the preceding 18 months may publish or distribute or allow to be published or distributed on its behalf an advertisement not subject to Section 1352.1 without having filed the same for the director's prior approval, if the plan and the material comply with each of the following conditions:

(1) The advertisement or a material provision thereof has not been previously disapproved by the director by written notice to the plan and the plan reasonably believes that the advertisement does not violate any requirement of this chapter or the rules thereunder.

(2) The plan files a true copy of each new or materially revised advertisement, used by it or by any person acting on behalf of the

plan, with the director not later than 10 business days after publication or distribution of the advertisement or within such additional period as the director may allow by rule or order.

(c) If the director finds that any advertisement of a plan has materially failed to comply with this chapter or the rules thereunder, the director may, by order, require the plan to publish in the same or similar medium, an approved correction or retraction of any untrue, misleading, or deceptive statement contained in the advertising, and may prohibit the plan from publishing or distributing, or allowing to be published or distributed on its behalf the advertisement or any new materially revised advertisement without first having filed a copy thereof with the director, 30 days prior to the publication or distribution thereof, or any shorter period specified in the order. An order issued under this subdivision shall be effective for 12 months from its issuance, and may be renewed by order if the advertisements submitted under this subdivision indicate difficulties of voluntary compliance with the applicable provisions of this chapter and the rules thereunder.

(d) A licensed plan or other person regulated under this chapter may, within 30 days after receipt of any notice or order under this section, file a written request for a hearing with the director.

(e) The director by rule or order may classify plans and advertisements and exempt certain classes, wholly or in part, either unconditionally or upon specified terms and conditions or for specified periods, from the application of subdivisions (a) and (b).

SEC. 88. Section 1363 of the Health and Safety Code, as amended by Section 2 of Chapter 994 of the Statutes of 1998, is amended to read:

1363. (a) The director shall require the use by each plan of disclosure forms or materials containing information regarding the benefits, services, and terms of the plan contract as the director may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The director may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained in this chapter shall preclude the director from permitting the disclosure form to be included with the evidence of coverage or plan contract.

The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with additional information as may be required by the director, in connection with the plan or plan contract:

(1) The principal benefits and coverage of the plan, including coverage for acute care and subacute care.

(2) The exceptions, reductions, and limitations that apply to the plan.

(3) The full premium cost of the plan.

(4) Any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan.

(5) The terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums.

(6) A statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions. The first page of the disclosure form shall contain a notice that conforms with all of the following conditions:

(A) (i) States that the evidence of coverage discloses the terms and conditions of coverage.

(ii) States, with respect to individual plan contracts, small group plan contracts, and any other group plan contracts for which health care services are not negotiated, that the applicant has a right to view the evidence of coverage prior to enrollment, and, if the evidence of coverage is not combined with the disclosure form, the notice shall specify where the evidence of coverage can be obtained prior to enrollment.

(B) Includes a statement that the disclosure and the evidence of coverage should be read completely and carefully and that individuals with special health care needs should read carefully those sections that apply to them.

(C) Includes the plan's telephone number or numbers that may be used by an applicant to receive additional information about the benefits of the plan or a statement where the telephone number or numbers are located in the disclosure form.

(D) For individual contracts, and small group plan contracts as defined in Article 3.1 (commencing with Section 1357), the disclosure form shall state where the health plan benefits and coverage matrix is located.

(E) Is printed in type no smaller than that used for the remainder of the disclosure form and is displayed prominently on the page.

(7) A statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.

(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability which is, or may be, incurred by the subscriber, enrollee, or a third party by reason of the exercise of that choice.

(9) A summary of the provisions required by subdivision (g) of Section 1373, if applicable.

(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.

(11) A summary of, and a notice of the availability of, the process the plan uses to authorize, modify, or deny health care services under the benefits provided by the plan, pursuant to Sections 1363.5 and 1367.01.

(12) A description of any limitations on the patient's choice of primary care or specialty care physician based on service area and limitations on the patient's choice of acute care hospital care, subacute or transitional inpatient care, or skilled nursing facility.

(13) General authorization requirements for referral by a primary care physician to a specialty care physician.

(14) Conditions and procedures for disenrollment.

(15) A description as to how an enrollee may request continuity of care as required by Section 1373.96 and request a second opinion pursuant to Section 1383.15.

(16) Information concerning the right of an enrollee to request an independent review in accordance with Article 12 (commencing with Section 1399.80).

(17) A notice as required by Section 1364.6.

(b) (1) As of July 1, 1999, the director shall require each plan offering a contract to an individual or small group to provide with the disclosure form for individual and small group plan contracts a uniform health plan benefits and coverage matrix containing the plan's major provisions in order to facilitate comparisons between plan contracts. The uniform matrix shall include the following category descriptions together with the corresponding copayments and limitations in the following sequence:

(A) Deductibles.
(B) Lifetime maximums.
(C) Professional services.
(D) Outpatient services.
(E) Hospitalization services.
(F) Emergency health coverage.
(G) Ambulance services.
(H) Prescription drug coverage.
(I) Durable medical equipment.
(J) Mental health services.
(K) Chemical dependency services.
(L) Home health services.
(M) Other.

(2) The following statement shall be placed at the top of the matrix in all capital letters in at least 10-point boldface type:

THIS MATRIX IS INTENDED TO BE USED TO HELP YOU COMPARE COVERAGE BENEFITS AND IS A SUMMARY ONLY. THE EVIDENCE OF COVERAGE AND PLAN CONTRACT SHOULD BE CONSULTED FOR A DETAILED DESCRIPTION OF COVERAGE BENEFITS AND LIMITATIONS.

(c) Nothing in this section shall prevent a plan from using appropriate footnotes or disclaimers to reasonably and fairly describe coverage arrangements in order to clarify any part of the matrix that may be unclear.

(d) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the director pursuant to this section for each plan so examined or sold.

(e) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contractholder upon delivery of the completed health care service plan agreement.

(f) Group contractholders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time those persons are offered the plan. Where the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contractholder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all applicants, upon request, prior to enrollment and to all subscribers enrolled under the group contract.

(g) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the group contract which may be less favorable to subscribers or enrollees.

(h) In addition to the other disclosures required by this section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health services paid for plan contracts with individuals and with groups of the same or similar size for the plan's preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies the geographic area and reports information applicable to that geographic area.

(i) Subdivision (b) shall not apply to any coverage provided by a plan for the Medi-Cal program or the Medicare program pursuant to Title XVIII and Title XIX of the Social Security Act.

SEC. 90. Section 1364 of the Health and Safety Code is amended to read:

1364. Where the director finds it necessary in the interest of full and fair disclosure, all advertising and other consumer information disseminated by a plan for the purpose of influencing persons to become members of a plan shall contain such supplemental disclosure information as the director may require.

SEC. 91. Section 1365 of the Health and Safety Code is amended to read:

1365. (a) An enrollment or a subscription may not be canceled or not renewed except for the following:

(1) Failure to pay the charge for such coverage if the subscriber has been duly notified and billed for the charge and at least 15 days has elapsed since the date of notification.

(2) Fraud or deception in the use of the services or facilities of the plan or knowingly permitting such fraud or deception by another.

(3) Such other good cause as is agreed upon in the contract between the plan and a group or the subscriber.

(b) An enrollee or subscriber who alleges that an enrollment or subscription has been canceled or not renewed because of the enrollee's or subscriber's health status or requirements for health care services may request a review by the director. If the director determines that a proper complaint exists under the provisions of this section, the director shall notify the plan. Within 15 days after receipt of such notice, the plan shall either request a hearing or reinstate the enrollee or subscriber. If, after hearing, the director determines that the cancellation or failure to renew is contrary to subdivision (a), the director shall order the plan to reinstate the enrollee or subscriber. A reinstatement pursuant to this subdivision shall be retroactive to the time of cancellation or failure to renew and the plan shall be liable for the expenses incurred by the subscriber or enrollee for covered health care services from the date of cancellation or nonrenewal to and including the date of reinstatement.

(c) This section shall not abrogate any preexisting contracts entered into prior to the effective date of this chapter between a subscriber or enrollee and a health care service plan or a specialized health care service plan including, but not limited to, the financial liability of such plan, except that each plan shall, if directed to do so by the director, exercise its authority, if any, under any such preexisting contracts to conform them to the provisions of subdivision (a).

SEC. 92. Section 1365.5 of the Health and Safety Code is amended to read:

1365.5. (a) No health care service plan or specialized health care service plan shall refuse to enter into any contract or shall cancel or decline to renew or reinstate any contract because of the race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age of any contracting party, prospective contracting party, or person reasonably expected to benefit from that contract as a subscriber, enrollee, member, or otherwise.

(b) The terms of any contract shall not be modified, and the benefits or coverage of any contract shall not be subject to any limitations, exceptions, exclusions, reductions, copayments, coinsurance, deductibles, reservations, or premium, price, or charge differentials, or other modifications because of the race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age of any contracting party, potential contracting

party, or person reasonably expected to benefit from that contract as a subscriber, enrollee, member, or otherwise; except that premium, price, or charge differentials because of the sex or age of any individual when based on objective, valid, and up-to-date statistical and actuarial data are not prohibited. Nothing in this section shall be construed to permit a health care service plan to charge different premium rates to individual enrollees within the same group solely on the basis of the enrollee's sex.

(c) It shall be deemed a violation of subdivision (a) for any health care service plan to utilize marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification, or any combination thereof for the purpose of establishing sexual orientation. Nothing in this section shall be construed to alter in any manner the existing law prohibiting health care service plans from conducting tests for the presence of human immunodeficiency virus or evidence thereof.

(d) This section shall not be construed to limit the authority of the director to adopt or enforce regulations prohibiting discrimination because of sex, marital status, or sexual orientation.

SEC. 93. Section 1366.4 of the Health and Safety Code is amended to read:

1366.4. (a) A medical group, physician, or independent practice association that contracts with a health care service plan may enter into contracts with licensed nonphysician providers to provide services, as defined in Section 1300.67(a)(1) of Title 10 of the California Code of Regulations, to plan enrollees covered by the contract between the plan and the group, physician, or association.

(b) The licensed nonphysician provider described in subdivision (a) that contracts with a medical group, physician, or independent practice association may directly bill, if direct billing is otherwise permitted by law, a health care service plan for covered services pursuant to a contract with the health care service plan that specifies direct billing. Direct billing pursuant to this subdivision is permitted only to the extent that the same services are not billed for by the medical group, physician, or independent practice association.

(c) A health care service plan may require the nonphysician provider to complete an appropriate credentialing process.

(d) Every health care service plan may either list licensed nonphysician providers that contract with medical groups, physicians, and independent practice associations pursuant to subdivision (b) in any listing or directory of plan health care providers that is provided to enrollees or to the public, or may include a notification in the plan's evidence of coverage or provider list that the health care service plan has contracts with nonphysician providers, pursuant to subdivision (b), and may list the types of contracted nonphysician providers. The notification may inform an enrollee that he or she may obtain a list of the nonphysician providers by contacting his or her primary or specialist medical group. The

listing may indicate whether licensed nonphysician providers may be accessed directly by enrollees.

(e) Nothing in this section shall be construed to authorize, or otherwise require the director to approve, a risk-sharing arrangement between a plan and a provider.

SEC. 94. Section 1367 of the Health and Safety Code is amended to read:

1367. Each health care service plan and, if applicable, each specialized health care service plan shall meet the following requirements:

(a) All facilities located in this state including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be so licensed or registered and the operating personnel for that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 10 of the California Code of Regulations.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a dispute resolution mechanism under which providers

may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(i) Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the director may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The director shall by rule define the scope of each basic health care service which health care service plans shall be required to provide as a minimum for licensure under this chapter. Nothing in this chapter shall prohibit a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the director and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(j) No health care service plan shall require registration under the Controlled Substances Act of 1970 (21 U.S.C. Sec. 801 et seq.) as a condition for participation by an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 of the Business and Professions Code.

Nothing in this section shall be construed to permit the director to establish the rates charged subscribers and enrollees for contractual health care services.

The director's enforcement of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

SEC. 95. Section 1367.02 of the Health and Safety Code is amended 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 director 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 director shall make each plan's filing available to the public upon request. The director shall not publicly disclose any information submitted pursuant to this section that is determined by the director 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. 96. Section 1367.3 of the Health and Safety Code is amended to read:

1367.3. (a) On and after January 1, 1993, every health care service plan that covers hospital, medical, or surgical expenses on a group basis shall offer benefits for the comprehensive preventive care of children. This section shall apply to children 17 and 18 years of age, except as provided in paragraph (4) of subdivision (b). Every plan shall communicate the availability of these benefits to all group contractholders and to all prospective group contractholders with whom they are negotiating. This section shall apply to a plan which, by rule or order of the director, has been exempted from subdivision (i) of Section 1367, insofar as that section and the rules thereunder relate to the provision of the preventive health care services described herein.

(b) For purposes of this section, benefits for the comprehensive preventive care of children shall comply with both of the following:

(1) Be consistent with both of the following:

(A) The Recommendations for Preventive Pediatric Health Care, as adopted by the American Academy of Pediatrics in September of 1987.

(B) The most current version of the Recommended Childhood Immunization Schedule/United States, jointly adopted by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and the American Academy of Family Physicians, unless the State Department of Health Services determines, within 45 days of the published date of the schedule, that the schedule is not consistent with the purposes of this section.

(2) Provide for the following:

(A) Periodic health evaluations.

(B) Immunizations.

(C) Laboratory services in connection with periodic health evaluations.

(D) For health care service plan contracts within the scope of this section that are issued, amended, or renewed on and after January 1, 1993, screening for blood lead levels in children at risk for lead poisoning, as determined by a physician and surgeon affiliated with the plan, when the screening is prescribed by a physician and surgeon affiliated with the plan. This subparagraph shall be applicable to all children and shall not be limited to children 17 and 18 years of age.

SEC. 97. Section 1367.35 of the Health and Safety Code is amended to read:

1367.35. (a) On and after January 1, 1993, every health care service plan that covers hospital, medical, or surgical expenses on a group basis shall provide benefits for the comprehensive preventive care of children 16 years of age or younger under terms and conditions agreed upon between the group subscriber and the plan. Every plan shall communicate the availability of these benefits to all group contractholders and to all prospective group contractholders with whom they are negotiating. This section shall apply to each plan that, by rule or order of the director, has been exempted from subdivision (i) of Section 1367, insofar as that section and the rules thereunder relate to the provision of the preventive health care services described in this section.

(b) For purposes of this section, benefits for the comprehensive preventive care of children shall comply with both of the following:

(1) Be consistent with both of the following:

(A) The Recommendations for Preventive Pediatric Health Care, as adopted by the American Academy of Pediatrics in September of 1987.

(B) The most current version of the Recommended Childhood Immunization Schedule/United States, jointly adopted by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and the American Academy of Family

Physicians, unless the State Department of Health Services determines, within 45 days of the published date of the schedule, that the schedule is not consistent with the purposes of this section.

(2) Provide for all of the following:

(A) Periodic health evaluations.

(B) Immunizations.

(C) Laboratory services in connection with periodic health evaluations.

SEC. 98. Section 1367.695 of the Health and Safety Code is amended to read:

1367.695. (a) The Legislature finds and declares that the unique, private, and personal relationship between women patients and their obstetricians and gynecologists warrants direct access to obstetrical and gynecological physician services.

(b) Commencing January 1, 1999, every health care service plan contract issued, amended, renewed, or delivered in this state, except a specialized health care service plan, shall allow an enrollee the option to seek obstetrical and gynecological physician services directly from a participating obstetrician and gynecologist or directly from a participating family practice physician and surgeon designated by the plan as providing obstetrical and gynecological services.

(c) In implementing this section, a health care service plan may establish reasonable provisions governing utilization protocols and the use of obstetricians and gynecologists, or family practice physicians and surgeons, as provided for in subdivision (b), participating in the plan network, medical group, or independent practice association, provided that these provisions shall be consistent with the intent of this section and shall be those customarily applied to other physicians and surgeons, such as primary care physicians and surgeons, to whom the enrollee has direct access, and shall not be more restrictive for the provision of obstetrical and gynecological physician services. An enrollee shall not be required to obtain prior approval from another physician, another provider, or the health care service plan prior to obtaining direct access to obstetrical and gynecological physician services, but the plan may establish reasonable requirements for the participating obstetrician and gynecologist or family practice physician and surgeon, as provided for in subdivision (b), to communicate with the enrollee's primary care physician and surgeon regarding the enrollee's condition, treatment, and any need for followup care.

(d) This section shall not be construed to diminish the provisions of Section 1367.69.

(e) The Department of Managed Care shall report to the Legislature, on or before January 1, 2000, on the implementation of this section.

SEC. 99. 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 director, 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. 100. Section 1367.15 of the Health and Safety Code is amended to read:

1367.15. (a) This section shall apply to individual health care service plan contracts and plan contracts sold to employer groups with fewer than two eligible employees as defined in subdivision (b) of Section 1357 covering hospital, medical, or surgical expenses, which is issued, amended, delivered, or renewed on or after January 1, 1994.

(b) As used in this section, "block of business" means individual plan contracts or plan contracts sold to employer groups with fewer than two eligible employees as defined in subdivision (b) of Section 1357, with distinct benefits, services, and terms. A "closed block of business" means a block of business for which a health care service plan ceases to actively offer or sell new plan contracts.

(c) No block of business shall be closed by a health care service plan unless (1) the plan permits an enrollee to receive health care services from any block of business that is not closed and which provides comparable benefits, services, and terms, with no additional underwriting requirement, or (2) the plan pools the experience of the closed block of business with all appropriate blocks of business that are not closed for the purpose of determining the premium rate of any plan contract within the closed block, with no rate penalty or surcharge beyond that which reflects the experience of the combined pool.

(d) A block of business shall be presumed closed if either of the following is applicable:

(1) There has been an overall reduction in that block of 12 percent in the number of in force plan contracts for a period of 12 months.

(2) That block has less than 1,000 enrollees in this state. This presumption shall not apply to a block of business initiated within the previous 24 months, but notification of that block shall be provided to the director pursuant to subdivision (e).

The fact that a block of business does not meet one of the presumptions set forth in this subdivision shall not preclude a determination that it is closed as defined in subdivision (b).

(e) A health care service plan shall notify the director in writing within 30 days of its decision to close a block of business or, in the absence of an actual decision to close a block of business, within 30 days of its determination that a block of business is within the presumption set forth in subdivision (d). When the plan decides to close a block, the written notice shall fully disclose all information necessary to demonstrate compliance with the requirements of subdivision (c). When the plan determines that a block is within the presumption, the written notice shall fully disclose all information necessary to demonstrate that the presumption is applicable. In the

case of either notice, the plan shall provide additional information within 15 days after any request of the director.

(f) A health care service plan shall preserve for a period of not less than five years in an identified location and readily accessible for review by the director all books and records relating to any action taken by a plan pursuant to subdivision (c).

(g) No health care service plan shall offer or sell any contract, or provide misleading information about the active or closed status of a block of business, for the purpose of evading this section.

(h) A health care service plan shall bring any blocks of business closed prior to the effective date of this section into compliance with the terms of this section no later than December 31, 1994.

(i) This section shall not apply to health care service plan contracts providing small employer health coverage to individuals or employer groups with fewer than two eligible employees if that coverage is provided pursuant to Article 3.1 (commencing with Section 1357) and, with specific reference to coverage for individuals or employer groups with fewer than two eligible employees, is approved by the director pursuant to Section 1357.15, provided a plan electing to sell coverage pursuant to this subdivision shall do so until such time as the plan ceases to market coverage to small employers and complies with subdivision (c) of Section 1357.11.

(j) This section shall not apply to coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, dental, vision, or conversion coverage.

SEC. 101. Section 1367.24 of the Health and Safety Code is amended to read:

1367.24. (a) Every health care service plan that provides prescription drug benefits shall maintain an expeditious process by which prescribing providers may obtain authorization for a medically necessary nonformulary prescription drug. On or before July 1, 1999, every health care service plan that provides prescription drug benefits shall file with the department a description of its process, including timelines, for responding to authorization requests for nonformulary drugs. Any changes to this process shall be filed with the department pursuant to Section 1352. Each plan shall provide a written description of its most current process, including timelines, to its prescribing providers. For purposes of this section, a prescribing provider shall include a provider authorized to write a prescription, pursuant to subdivision (a) of Section 4040 of the Business and Professions Code, to treat a medical condition of an enrollee.

(b) Any plan that disapproves a request made pursuant to subdivision (a) by a prescribing provider to obtain authorization for a nonformulary drug shall provide the reasons for the disapproval in a notice provided to the enrollee. The notice shall indicate that the enrollee may file a grievance with the plan if the enrollee objects to the disapproval, including any alternative drug or treatment offered

by the plan. The notice shall comply with subdivision (b) of Section 1368.02.

(c) The process described in subdivision (a) by which prescribing providers may obtain authorization for medically necessary nonformulary drugs shall not apply to a nonformulary drug that has been prescribed for an enrollee in conformance with the provisions of Section 1367.22.

(d) The process described in subdivision (a) by which enrollees may obtain medically necessary nonformulary drugs, including specified timelines for responding to prescribing provider authorization requests, shall be described in evidence of coverage and disclosure forms, as required by subdivision (a) of Section 1363, issued on or after July 1, 1999.

(e) Every health care service plan that provides prescription drug benefits shall maintain, as part of its books and records under Section 1381, all of the following information, which shall be made available to the director upon request:

(1) The complete drug formulary or formularies of the plan, if the plan maintains a formulary, including a list of the prescription drugs on the formulary of the plan by major therapeutic category with an indication of whether any drugs are preferred over other drugs.

(2) Records developed by the pharmacy and therapeutic committee of the plan, or by others responsible for developing, modifying, and overseeing formularies, including medical groups, individual practice associations, and contracting pharmaceutical benefit management companies, used to guide the drugs prescribed for the enrollees of the plan, that fully describe the reasoning behind formulary decisions.

(3) Any plan arrangements with prescribing providers, medical groups, individual practice associations, pharmacists, contracting pharmaceutical benefit management companies, or other entities that are associated with activities of the plan to encourage formulary compliance or otherwise manage prescription drug benefits.

(f) If a plan provides prescription drug benefits, the department shall, as part of its periodic onsite medical survey of each plan undertaken pursuant to Section 1380, review the performance of the plan in providing those benefits, including, but not limited to, a review of the procedures and information maintained pursuant to this section, and describe the performance of the plan as part of its report issued pursuant to Section 1380.

(g) The director shall not publicly disclose any information reviewed pursuant to this section that is determined by the director to be confidential pursuant to state law.

(h) Nothing in this section shall be construed to restrict or impair the application of any other provision of this chapter, including, but not limited to, Section 1367, which includes among its requirements that a health care service plan furnish services in a manner providing continuity of care and demonstrate that medical decisions are

rendered by qualified medical providers unhindered by fiscal and administrative management. Subdivision (c) of Section 1367.24, which establishes an exemption if a drug has been prescribed in conformance with Section 1367.22, shall have no effect unless Section 1367.22 of the Health and Safety Code, as added by Assembly Bill 974 of the 1997–98 Regular Session, takes effect on or before July 1, 1999.

SEC. 103. Section 1368.02 of the Health and Safety Code, as amended by Section 3 of Chapter 377 of the Statutes of 1998, is amended to read:

1368.02. (a) The director shall establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the director.

(b) Every health care service plan shall publish the department's toll-free telephone number, the California Relay Service's toll-free telephone numbers for the hearing and speech impaired, the plan's telephone number, and the department's Internet address, on every plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan, including any written communications to an enrollee that offer the enrollee the opportunity to participate in the grievance process of the plan and on all written responses to grievances. The department's telephone number, the California Relay Service's telephone numbers, the plan's telephone number, and the department's Internet address shall be displayed by the plan in each of these documents in 12-point boldface type in the following regular type statement:

"The California Department of Managed Care is responsible for regulating health care service plans. The department has a toll-free telephone number (1-800-400-0815) to receive complaints regarding health plans. The hearing and speech impaired may use the California Relay Service's toll-free telephone numbers (1-800-735-2929 (TTY) or 1-888-877-5378 (TTY)) to contact the department. The department's Internet website (http://www.dmc.ca.gov) has complaint forms and instructions online. If you have a grievance against your health plan, you should first telephone your plan at [plan's telephone number] and use the plan's grievance process before contacting the department. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. The plan's grievance process and the department's complaint review process are in addition to any other dispute resolution procedures that may be available to you, and your failure to use these processes does not preclude your use of any other remedy provided by law."

(c) (1) There is within the department an Office of Patient Advocate, which shall be known and may be cited as the Gallegos-Rosenthal Patient Advocate Program, to represent the interests of enrollees served by health care service plans regulated by the department. The goal of the office shall be to help enrollees secure health care services to which they are entitled under the laws administered by the department.

(2) The office shall be headed by a patient advocate recommended to the Governor by the Secretary of the Business, Transportation and Housing Agency. The patient advocate shall be appointed by and serve at the pleasure of the Governor.

(3) The duties of the office shall be determined by the secretary, in consultation with the director, and shall include, but not be limited to:

(A) Developing educational and informational guides for consumers describing enrollee rights and responsibilities, and informing enrollees on effective ways to exercise their rights to secure health care services. The guides shall be easy to read and understand, available in English and other languages, and shall be made available to the public by the department, including access on the department's Internet website and through public outreach and educational programs.

(B) Compiling an annual publication, to be made available on the department's Internet website, of a quality of care report card including but not limited to health care service plans.

(C) Rendering advice and assistance to enrollees regarding procedures, rights, and responsibilities related to the use of health care service plan grievance systems, the department's system for reviewing unresolved grievances, and the independent review process.

(D) Making referrals within the department regarding studies, investigations, audits, or enforcement that may be appropriate to protect the interests of enrollees.

(E) Coordinating and working with other government and nongovernment patient assistance programs and health care ombudsprograms.

(4) The director, in consultation with the patient advocate, shall provide for the assignment of personnel to the office. The department may employ or contract with experts when necessary to carry out functions of the office. The annual budget for the office shall be separately identified in the annual budget request of the department.

(5) The office shall have access to department records including, but not limited to, information related to health care service plan audits, surveys, and enrollee grievances. The department shall assist the office in compelling the production and disclosure of any information the office deems necessary to perform its duties, from entities regulated by the department, if the information is

determined by the department's legal counsel to be subject, under existing law, to production or disclosure to the department.

(6) The patient advocate shall annually issue a public report on the activities of the office, and shall appear before the appropriate policy and fiscal committees of the Senate and Assembly, if requested, to report and make recommendations on the activities of the office.

SEC. 105. Section 1370 of the Health and Safety Code is amended to read:

1370. Every plan shall establish procedures in accordance with department regulations for continuously reviewing the quality of care, performance of medical personnel, utilization of services and facilities, and costs. Notwithstanding any other provision of law, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person who participates in plan or provider quality of care or utilization reviews by peer review committees which are composed chiefly of physicians and surgeons or dentists, psychologists, or optometrists, or any of the above, for any act performed during the reviews if the person acts without malice, has made a reasonable effort to obtain the facts of the matter, and believes that the action taken is warranted by the facts, and neither the proceedings nor the records of the reviews shall be subject to discovery, nor shall any person in attendance at the reviews be required to testify as to what transpired thereat. Disclosure of the proceedings or records to the governing body of a plan or to any person or entity designated by the plan to review activities of the plan or provider committees shall not alter the status of the records or of the proceedings as privileged communications.

The above prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at a review who is a party to an action or proceeding the subject matter of which was reviewed, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits, or to the director in conducting surveys pursuant to Section 1380.

This section shall not be construed to confer immunity from liability on any health care service plan. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against a health care service plan, the cause of action shall exist notwithstanding the provisions of this section.

SEC. 107. Section 1371.4 of the Health and Safety Code is amended to read:

1371.4. (a) A health care service plan, or its contracting medical providers, shall provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care, for circumstances where the enrollee has received emergency services and care is stabilized, but the treating provider believes that the

enrollee may not be discharged safely. A physician and surgeon shall be available for consultation and for resolving disputed requests for authorizations. A health care service plan that does not require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition or active labor need not satisfy the requirements of this subdivision.

(b) A health care service plan shall reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c). As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain authorization prior to the provision of emergency services and care necessary to stabilize the enrollee's emergency medical condition.

(c) Payment for emergency services and care may be denied only if the health care service plan reasonably determines that the emergency services and care were never performed; provided that a health care service plan may deny reimbursement to a provider for a medical screening examination in cases when the plan enrollee did not require emergency services and care and the enrollee reasonably should have known that an emergency did not exist. A health care service plan may require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition.

(d) If there is a disagreement between the health care service plan and the provider regarding the need for necessary medical care, following stabilization of the enrollee, the plan shall assume responsibility for the care of the patient either by having medical personnel contracting with the plan personally take over the care of the patient within a reasonable amount of time after the disagreement, or by having another general acute care hospital under contract with the plan agree to accept the transfer of the patient as provided in Section 1317.2, Section 1317.2a, or other pertinent statute. However, this requirement shall not apply to necessary medical care provided in hospitals outside the service area of the health care service plan. If the health care service plan fails to satisfy the requirements of this subdivision, further necessary care shall be deemed to have been authorized by the plan. Payment for this care may not be denied.

(e) A health care service plan may delegate the responsibilities enumerated in this section to the plan's contracting medical providers.

(f) Subdivisions (b), (c), (d), (g), and (h) shall not apply with respect to a nonprofit health care service plan that has 3,500,000 enrollees and maintains a prior authorization system that includes the availability by telephone within 30 minutes of a practicing emergency department physician.

(g) The Department of Managed Care shall adopt by July 1, 1995, on an emergency basis, regulations governing instances when an enrollee requires medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to requests for treatment authorization.

(h) The Department of Managed Care shall adopt, by July 1, 1999, on an emergency basis, regulations governing instances when an enrollee in the opinion of the treating provider requires necessary medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to a request for treatment authorization from a treating provider who has a contract with a plan.

(i) The definitions set forth in Section 1317.1 shall control the construction of this section.

SEC. 108. Section 1372 of the Health and Safety Code is amended to read:

1372. Subject to the applicable provisions of this chapter, a plan may offer one or more plan contracts or specialized health care service plan contracts, except that a specialized health care service plan contract shall not offer one or more basic health care services except as may be permitted by rule or order of the director. Advertising, disclosure forms, contract forms, and evidences of coverage for more than one type of plan contract or specialized health care service plan contract, or both, may not be used except as authorized by the director pursuant to this chapter.

SEC. 109. Section 1373 of the Health and Safety Code is amended to read:

1373. (a) A plan contract may not provide an exception for other coverage where the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal or medicaid benefits.

A plan contract shall not provide an exemption for enrollment because of an applicant's entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal or medicaid benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in this section, "sterilization operations or procedures" shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract that provides coverage to the spouse or dependents of the subscriber or spouse shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or spouse covered and to each minor child placed for adoption from and after the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health facility minor release report, a medical authorization form, or a relinquishment form, granting the subscriber or spouse the right to control health care for the adoptive child or, absent this written document, on the date there exists evidence of the subscriber's or spouse's right to control the health care of the child placed for adoption. No such plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or spouse covered as required by this subdivision.

(d) Every plan contract that provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the plan by the member within 31 days of the request for the information by the plan or group plan contractholder and subsequently as may be required by the plan or group plan contractholder, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(e) A plan contract which provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any,

as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the director.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h) (1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of these services. If the terms and conditions include coverage for services provided in a general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover these services in all of its group contracts shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code), any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (i) any marriage, family, and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, (ii) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, or (iii) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at the time that the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental

health nursing, to perform the particular services covered under the terms of the plan, and the certificate holder is expressly authorized by law to perform these services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, "marriage, family, and child counselor" means a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or licenseholder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations that offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, "individual practice association" means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (42 U.S.C. Sec. 300e-1, subsec. (5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and which are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract which provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.

SEC. 110. Section 1373.95 of the Health and Safety Code is amended to read:

1373.95. (a) On or before July 1, 1996, every health care service plan that provides coverage on a group basis shall file with the Department of Managed Care, a written policy describing how the health plan shall facilitate the continuity of care for new enrollees receiving services during a current episode of care for an acute

condition from a nonparticipating provider. This written policy shall describe the process used to facilitate the continuity of care, including the assumption of care by a participating provider. Notice of the policy and information regarding how enrollees may request a review under the policy shall be provided to all new enrollees, except those enrollees who are not eligible as described in subdivision (e). A copy of the written policy shall be provided to eligible enrollees upon request.

(b) The written policy shall describe how requests to continue services with an existing provider are reviewed by the plan. The policy shall ensure that reasonable consideration is given to the potential clinical effect that a change of provider would have on the enrollee's treatment for the acute condition.

(c) A health care service plan may require any nonparticipating provider whose services are continued pursuant to the written policy to agree in writing to meet the same contractual terms and conditions that are imposed upon the plan's participating providers, including location within the plan's service area, reimbursement methodologies, and rates of payment. If the health care service plan determines that a patient's health care treatment should temporarily continue with the patient's existing provider, the health care service plan shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provision of services by the existing provider.

(d) Nothing in this section shall require a health care service plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.

(e) The written policy shall not apply to any enrollee who is offered an out-of-network option, or who had the option to continue with his or her previous health plan or provider and instead voluntarily chose to change health plans.

(f) This section shall not apply to health plan contracts that include out-of-network coverage under which the enrollee is able to obtain services from the enrollee's existing provider.

(g) For purposes of this section, "provider" refers to a person who is described in subdivision (f) of Section 900 of the Business and Professions Code.

SEC. 111. Section 1374.9 of the Health and Safety Code is amended to read:

1374.9. For violations of Section 1374.7, the commissioner may, after appropriate notice and opportunity for hearing, by order levy administrative penalties as follows:

(a) Any health care service plan that violates Section 1374.7, or that violates any rule or order adopted or issued pursuant to this section, is liable for administrative penalties of not less than two thousand five hundred dollars ($2,500) for each first violation, and of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000) for each second violation, and of not less

than fifteen thousand dollars ($15,000) and not more than one hundred thousand dollars ($100,000) for each subsequent violation.

(b) The administrative penalties shall be paid to the Managed Care Fund.

(c) The administrative penalties available to the commissioner pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the commissioner to enforce the provisions of this chapter.

SEC. 112. Section 1374.26 of the Health and Safety Code is amended to read:

1374.26. The director may, as required by this article, or from time to time as conditions warrant, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt reasonable regulations, and amendments and additions thereto, as are necessary to administer this article.

SEC. 113. Section 1374.27 of the Health and Safety Code is amended to read:

1374.27. The director may levy administrative penalties and may suspend or revoke the license or licenses issued to any health care service plan, after notice and hearing, to have violated this article or a regulation adopted pursuant to the authority of this article. Notice of hearing shall be accomplished and a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all of the powers granted therein.

The remedies available to the director pursuant to this article are not exclusive, and may be sought and employed in any combination with other remedies deemed advisable by the director to enforce the provisions of this article.

SEC. 114. Section 1374.28 of the Health and Safety Code is amended to read:

1374.28. In addition to any other penalty provided by law or the availability of any administrative procedure, if a health care service plan, after notice and hearing, is found to have violated this article, or regulations adopted pursuant to this article, or knowingly permits any person to do so, the director may suspend the authority of the plan to transact business.

SEC. 115. Section 1374.60 of the Health and Safety Code is amended to read:

1374.60. For purpose of this article, the following definitions shall apply:

(a) A "point-of-service plan contract" means any plan contract offered by a health care service plan whereby the health care service plan assumes financial risk for both "in-network coverage or services" and "out-of-network coverage or services."

The term "point-of-service plan contract" shall not apply to a plan contract where the out-of-network coverage or service is underwritten by an insurance company admitted in this state or is provided by a self-insured employer and is offered in conjunction with in-network coverage or services provided pursuant to a health care service plan contract.

(b) "Out-of-network coverage or services" means health care services received either from (1) providers who are not employed by, under contract with, or otherwise affiliated with the health care service plan, except for health care services received from these providers in an emergency or when referred or authorized by the plan under procedures specifically reviewed and approved by the director or (2) providers who are employed by, under contract with, or otherwise affiliated with a health care service plan in instances when the "in-network coverage or services" requirements for care set forth in the health care service plan's approved evidence of coverage are not met.

(c) "In-network coverage or services" means all of the following:

(1) All the health care services provided or offered under the requirements of this chapter that are received from a provider employed by, under contract with, or otherwise affiliated with the health care service plan and in accordance with the procedures set forth in the plan's approved evidence of coverage.

(2) Health care services received from a provider not affiliated with the health care service plan when the plan arranges for the enrollee to receive services from that provider.

(3) Out-of-area emergency care provided in accordance with the procedures set by the health care service plan to be followed in securing these services.

SEC. 116. Section 1374.64 of the Health and Safety Code is amended to read:

1374.64. (a) Only a plan that has been licensed under this chapter and in operation in this state for a period of five years or more, or a plan licensed under this chapter and operating in this state for a period of five or more years under a combination of (1) licensure under this chapter and (2) pursuant to a certificate of authority issued by the Department of Insurance may offer a point-of-service contract. A specialized health care service plan shall not offer a point-of-service plan contract unless this plan was formerly registered under the Knox-Mills Health Plan Act (Article 2.5 (commencing with Section 12530) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code), as repealed by Chapter 941 of the Statutes of 1975, and offered point-of-service plan contracts previously approved by the director on July 1, 1976, and on September 1, 1993.

(b) A plan may offer a point-of-service plan contract only if the director has not found the plan to be in violation of any requirements, including administrative capacity, under this chapter or the rules

adopted thereunder and the plan meets, at a minimum, the following financial criteria:

(1) The minimum financial criteria for a plan that maintains a minimum net worth of at least five million dollars ($5,000,000) shall be:

(A) (i) Initial tangible net equity so that the plan is not required to file monthly reports with the director as required by Section 1300.84.3(d)(1)(G) of Title 10 of the California Code of Regulations and then have and maintain adjusted tangible net equity to be determined pursuant to either of the following:

(I) In the case of a plan that is required to have and maintain a tangible net equity as required by Section 1300.76(a)(1) or (2) of Title 10 of the California Code of Regulations, multiply 130 percent times the sum resulting from the addition of the plan's tangible net equity required by Section 1300.76(a)(1) or (2) of Title 10 of the California Code of Regulations and the number that equals 10 percent of the plan's annualized health care expenditures for out-of-network services for point-of-service enrollees.

(II) In the case of a plan that is required to have and maintain a tangible net equity as required by Section 1300.76(a)(3) of Title 10 of the California Code of Regulations, recalculate the plan's tangible net equity under Section 1300.76(a)(3) of Title 10 of the California Code of Regulations excluding the plan's annualized health care expenditures for out-of-network services for point-of-service enrollees, add together the number resulting from this recalculation and the number that equals 10 percent of the plan's annualized health care expenditures for out-of-network services for point of services enrollees, and multiply this sum times 130 percent, provided that the product of this multiplication must exceed 130 percent of the tangible net equity required by Section 1300.76(a)(3) of Title 10 of the California Code of Regulations so that the plan is not required to file monthly reports to the director as required by Section 1300.84.3(d)(1)(G) of Title 10 of the California Code of Regulations.

(ii) The failure of a plan offering a point-of-service plan contract under this article to maintain adjusted tangible net equity as determined by this subdivision shall require the filing of monthly reports with the director pursuant to Section 1300.84.3(d) of Title 10 of the California Code of Regulations, in addition to any other requirements that may be imposed by the director on a plan under this article and chapter.

(iii) The calculation of tangible net equity under any report to be filed by a plan offering a point-of-service plan contract under this article and required of a plan pursuant to Section 1384, and the regulations adopted thereunder, shall be on the basis of adjusted tangible net equity as determined under this subdivision.

(B) Demonstrates adequate working capital, including (i) a current ratio (current assets divided by current liabilities) of at least 1:1, after excluding obligations of officers, directors, owners, or

affiliates, or (ii) evidence that the plan is now meeting its obligations on a timely basis and has been doing so for at least the preceding two years. Short-term obligations of affiliates for goods or services arising in the normal course of business that are payable on the same terms as equivalent transactions with nonaffiliates shall not be excluded. For purposes of this subdivision, an obligation is considered short term if the repayment schedule is 30 days or fewer.

(C) Demonstrates a trend of positive earnings over the previous eight fiscal quarters.

(2) The minimum financial criteria for a plan that maintains a minimum net worth of at least one million five hundred thousand dollars ($1,500,000) but less than five million dollars ($5,000,000) shall be:

(A) (i) Initial tangible net equity so that the plan is not required to file monthly reports with the director as required by Section 1300.84.3(d)(1)(G) of Title 10 of the California Code of Regulations and then have and maintain adjusted tangible net equity to be determined pursuant to either of the following:

(I) In the case of a plan that is required to have and maintain a tangible net equity as required by Section 1300.76(a)(1) or (2) of Title 10 of the California Code of Regulations, multiply 130 percent times the sum resulting from the addition of the plan's tangible net equity required by Section 1300.76(a)(1) or (2) of Title 10 of the California Code of Regulations and the number that equals 10 percent of the plan's annualized health care expenditures for out-of-network services for point-of-service enrollees.

(II) In the case of a plan that is required to have and maintain a tangible net equity as required by Section 1300.76(a)(3) of Title 10 of the California Code of Regulations, recalculate the plan's tangible net equity under Section 1300.76(a)(3) excluding the plan's annualized health care expenditures for out-of-network services for point-of-service enrollees, add together the number resulting from this recalculation and the number that equals 10 percent of the plan's annualized health care expenditures for out-of-network services for point-of-services enrollees, and multiply this sum times 130 percent, provided that the product of this multiplication must exceed 130 percent of the tangible net equity required by Section 1300.76(a)(3) of Title 10 of the California Code of Regulations so that the plan is not required to file monthly reports to the director as required by Section 1300.84.3(d)(1)(G) of Title 10 of the California Code of Regulations.

(ii) The failure of a plan offering a point-of-service plan contract under this article to maintain adjusted tangible net equity as determined by this subdivision shall require the filing of monthly reports with the director pursuant to Section 1300.84.3(d) of Title 10 of the California Code of Regulations, in addition to any other requirements that may be imposed by the director on a plan under this article and chapter.

(iii) The calculation of tangible net equity under any report to be filed by a plan offering a point-of-service plan contract under this article and required of a plan pursuant to Section 1384, and the regulations adopted thereunder, shall be on the basis of adjusted tangible net equity as determined under this subdivision.

(B) Demonstrates adequate working capital, including (i) a current ratio (current assets divided by current liabilities) of at least 1:1, after excluding obligations of officers, directors, owners, or affiliates or (ii) evidence that the plan is now meeting its obligations on a timely basis and has been doing so for at least the preceding two years. Short-term obligations of affiliates for goods or services arising in the normal course of business that are payable on the same terms as equivalent transactions with nonaffiliates shall not be excluded. For purposes of this subdivision, an obligation is considered short term if the repayment schedule is 30 days or fewer.

(C) Demonstrates a trend of positive earnings over the previous eight fiscal quarters.

(D) Demonstrates to the director that it has obtained insurance for the cost of providing any point-of-service enrollee with out-of-network covered health care services, the aggregate value of which exceeds five thousand dollars ($5,000) in any year. This insurance shall obligate the insurer to continue to provide care for the period in which a premium was paid in the event a plan becomes insolvent. Where a plan cannot obtain insurance as required by this subparagraph, then a plan may demonstrate to the director that it has made other arrangements, acceptable to the director, for the cost of providing enrollees out-of-network health care services; but in this case the expenditure for total out-of-network costs for all enrollees in all point-of-service contracts shall be limited to a percentage, acceptable to the director, not to exceed 15 percent of total health care expenditures for all its enrollees.

(c) Within 30 days of the close of each month a plan offering point-of-service plan contracts under paragraph (2) of subdivision (b) shall file with the director a monthly financial report consisting of a balance sheet and statement of operations of the plan, which need not be certified, and a calculation of the adjusted tangible net equity required under subparagraph (A). The financial statements shall be prepared on a basis consistent with the financial statements furnished by the plan pursuant to Section 1300.84.2 of Title 10 of the California Code of Regulations. A plan shall also make special reports to the director as the director may from time to time require. Each report to be filed by a plan pursuant to this subdivision shall be verified by a principal officer of the plan as set forth in Section 1300.84.2(e) of Title 10 of the California Code of Regulations.

(d) If it appears to the director that a plan does not have sufficient financial viability, or organizational and administrative capacity to assure the delivery of health care services to its enrollees, the director may, by written order, direct the plan to discontinue the offering of

a point-of-service plan contract. The order shall be effective immediately.

SEC. 117. Section 1374.66 of the Health and Safety Code is amended to read:

1374.66. Any health care service plan that offers a point-of-service plan contract may do all of the following:

(a) Limit or exclude coverage for specific types of services or conditions when obtained out-of-plan.

(b) Include annual out-of-pocket limits, copayments, and annual and lifetime maximum benefit limits for out-of-network coverage or services that are different or separate from any amounts or limits applied to in-network coverage or services, and may impose a deductible on coverage for out-of-network coverage or services.

(c) To the extent permitted under this chapter, may limit the groups to which a point-of-service plan contract is offered, and may adopt nondiscriminatory renewal guidelines under which one or more point-of-service plan contracts would be replaced with other than point-of-service plan contracts. If a point-of-service plan contract is sold to a group, then the group shall offer it to all members of that group who are eligible for coverage by the health care service plan.

(d) Treat as out-of-network services those services that an enrollee obtains from a provider affiliated with the plan, but not in accordance with the authorization procedures set forth in the health care service plan's approved evidence of coverage.

(e) Contracts between health care service plans and medical providers, for the purpose of providing medical services under point-of-service contracts, may include risk-sharing arrangements for out-of-network services, but only if the risk sharing arrangements meet all of the following conditions:

(1) The contracting medical provider agrees to participate in risk-sharing arrangements applicable to out-of-network services.

(2) If the medical provider is reimbursed on a capitated or prepaid basis, the contract shall clearly disclose the capitation or prepayment amount to be paid to the medical provider for in-network services received by enrollees under point-of-service contracts.

(3) Any capitation or prepayment amounts paid to the medical provider shall not place the medical provider directly at risk for or directly transfer liability for out-of-network services received by enrollees under point-of-service contracts.

(4) The risk-sharing arrangements for out-of-network services may provide a bonus or incentive to the medical provider to attempt to reduce the utilization of out-of-network services, but shall not place the medical provider at risk for any amounts in excess of the amounts used by the plan to budget for or fund the risk-sharing pool for out-of-network services.

(5) The contract between the medical provider and the plan shall clearly disclose the mathematical method by which funding for the

risk-sharing arrangement is established, the mathematical method by which and the extent to which payments for out-of-network services are debited against the risk-sharing funds, and the method by which the risk-sharing arrangement is reconciled on no less than an annual basis.

(6) The contract is approved by the director.

SEC. 118. Section 1374.67 of the Health and Safety Code is amended to read:

1374.67. A health care service plan offering a point-of-service plan contract is subject to the following limitations:

(a) A health care service plan shall limit its offering of point-of-service plan contracts so that no more than 50 percent of the plan's total premium revenue in any fiscal quarter is earned from point-of-service plan contracts.

(b) A health care service plan offering a point-of-service plan contract shall not expend in any fiscal-year quarter more than 20 percent of its total health care expenditures for all its enrollees for out-of-network services for point-of-service enrollees.

(c) If the amount specified in subdivision (a) or (b) is exceeded by 2 percent in any quarter, the health care service plan shall come into compliance with subdivisions (a) and (b) by the end of the next following quarter. If compliance with the amount specified in subdivisions (a) and (b) is not demonstrated in the health care service plan's next quarterly report, the director may prohibit the health care service plan from offering a point-of-service plan contract to new groups, or may require the health care service plan to amend one or more of its point-of-service contracts at the time of renewal to delete some or all of the out-of-network coverage or services as may be necessary for the plan to demonstrate compliance to the director's satisfaction.

(d) The limitation imposed by this section shall not apply to a plan which in substantial part indemnified subscribers and enrollees pursuant to contracts issued under such plan's former registration under the Knox-Mills Health Plan Act in 1975 and as of that date, and on September 1, 1993, was offering point-of-service plan contracts previously approved by the director.

SEC. 119. Section 1374.68 of the Health and Safety Code is amended to read:

1374.68. A health care service plan that offers a point-of-service plan contract shall do all of the following:

(a) Deposit with the director or, at the discretion of the director, with any organization or trustee acceptable to the director through which a custodial or controlled account is maintained, cash, securities, or any combination of these, which is acceptable to the director, that at all times have a fair market value equal to the greater of either one of the following:

(1) Two hundred thousand dollars ($200,000).

(2) One hundred twenty percent of the plan's current monthly claims payable plus incurred but not reported balance for coverage out-of-network coverage or services provided under point-of-service contracts.

(b) Track out-of-network point-of-service utilization separately from in-network utilization.

(c) Record point-of-service utilization in a manner that will permit utilization and cost reporting as the director may require.

(d) Demonstrate to the satisfaction of the director that the health care service plan has the fiscal, administrative, and marketing capacity to control its point-of-service plan contract enrollment, utilization, and costs so as not to jeopardize the financial viability or organizational and administrative capacity of the health care service plan.

(e) Maintain the deposit required under subdivision (a) in a manner agreed to by the director, subject to subdivision (a) of Section 1377 and any regulations adopted thereunder.

(f) Any deposit made pursuant to this section shall be a credit against any deposit required by subdivision (a) of Section 1377.

SEC. 120. Section 1374.69 of the Health and Safety Code is amended to read:

1374.69. At least 20 business days prior to offering a point-of-service plan contract, a health care service plan shall file a notice of material modification in accordance with Section 1352. The notice of material modification shall include, but not be limited to, provisions specifying how the health care service plan shall accomplish all of the following:

(a) Design the benefit levels and conditions of coverage for in-network coverage and services and out-of-network point-of-service utilization.

(b) Provide or arrange for the provision of adequate systems to do all of the following:

(1) Process and pay claims for all out-of-network coverage and services.

(2) Generate accurate financial and utilization data and reports on a timely basis, so that it and any authorized regulatory agency can evaluate the health care service plan's experience with point-of-service plan contracts and monitor compliance with point-of-service plan contract projections established by the health care service plan and regulatory requirements.

(3) Track and monitor the quality of health care obtained out-of-network by plan enrollees to the extent reasonable and possible.

(4) Respond promptly to enrollee grievances and complaints, written or oral, including those regarding services obtained out-of-network.

(5) Meet the requirements for a point-of-service plan contract set forth in this section and any additional requirements that may be required by the director.

(c) Comply initially and on an ongoing basis with the requirements of this article.

(d) This section shall become operative July 1, 1995.

SEC. 121. Section 1374.71 of the Health and Safety Code is amended to read:

1374.71. No plan formerly registered under the Knox-Mills Health Plan Act (Article 2.5 (commencing with Section 12530) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code) in 1975 shall be required to file a notice of material modification under Section 1374.69 or 1374.70 for any point-of-service plan contract previously approved by the director under this chapter and offered by plan on or before September 1, 1993.

SEC. 122. Section 1375.1 of the Health and Safety Code is amended to read:

1375.1. (a) Every plan shall have and shall demonstrate to the director that it has all of the following:

(1) A fiscally sound operation and adequate provision against the risk of insolvency.

(2) Assumed full financial risk on a prospective basis for the provision of covered health care services, except that a plan may obtain insurance or make other arrangements for the cost of providing to any subscriber or enrollee covered health care services, the aggregate value of which exceeds five thousand dollars ($5,000) in any year, for the cost of covered health care services provided to its members other than through the plan because medical necessity required their provision before they could be secured through the plan, and for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for that fiscal year.

(3) A procedure for prompt payment or denial of provider and subscriber or enrollee claims, including those telemedicine services, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, covered by the plan. Except as provided in Section 1371, a procedure meeting the requirements of Subchapter G of the regulations (29 C.F.R. Part 2560) under Public Law 93-406 (88 Stats. 829-1035, 29 U.S.C. Secs. 1001 et seq.) shall satisfy this requirement.

(b) In determining whether the conditions of this section have been met, the director shall consider, but not be limited to, the following:

(1) The financial soundness of the plan's arrangements for health care services and the schedule of rates and charges used by the plan.

(2) The adequacy of working capital.

(3) Agreements with providers for the provision of health care services.

(c) For the purposes of this section, "covered health care services" means health care services provided under all plan contracts.

SEC. 123. Section 1376 of the Health and Safety Code is amended to read:

1376. (a) No plan shall conduct any activity regulated by this chapter in contravention of such rules and regulations as the director may prescribe as necessary or appropriate in the public interest or for the protection of plans, subscribers, and enrollees to provide safeguards with respect to the financial responsibility of plans. Such rules and regulations may require a minimum capital or net worth, limitations on indebtedness, procedures for the handling of funds or assets, including segregation of funds, assets and net worth, the maintenance of appropriate insurance and a fidelity bond and the maintenance of a surety bond in an amount not exceeding fifty thousand dollars ($50,000).

(b) The surety bond referred to in subdivision (a) shall be conditioned upon compliance by the licensee with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter and orders issued under this chapter. Every surety bond shall provide that no suit may be maintained to enforce any liability thereon unless brought within two years after the act upon which such suit is based.

(c) For purposes of computing any minimum capital requirement which may be prescribed by the rules and regulations of the director under subdivision (a), any operating cost assistance or direct loan made to a plan by the United States Department of Health and Human Services pursuant to Public Law 93-222, as amended, may be treated as a subordinated loan, notwithstanding any express terms thereof to the contrary.

(d) Each solicitor and solicitor firm shall handle funds received for the account of plans, subscribers, or groups in accordance with such rules as the director may adopt pursuant to this subdivision.

(e) The director may, by regulation, designate requirements of this section or regulations adopted pursuant to this section, from which public entities and political subdivisions of the state shall be exempt.

SEC. 124. Section 1377 of the Health and Safety Code is amended to read:

1377. (a) Every plan which reimburses providers of health care services that do not contract in writing with the plan to provide health care services, or which reimburses its subscribers or enrollees for costs incurred in having received health care services from providers that do not contract in writing with the plan, in an amount which exceeds 10 percent of its total costs for health care services for the immediately preceding six months, shall comply with the requirements set forth in either paragraph (1) or (2):

(1) (A) Place with the director, or with any organization or trustee acceptable to the director through which a custodial or

controlled account is maintained, a noncontracting provider insolvency deposit consisting of cash or securities that are acceptable to the director that at all times have a fair market value in an amount at least equal to 120 percent of the sum of the following:

(i) All claims for noncontracting provider services received for reimbursement, but not yet processed.

(ii) All claims for noncontracting provider services denied for reimbursement during the previous 45 days.

(iii) All claims for noncontracting provider services approved for reimbursement, but not yet paid.

(iv) An estimate of claims for noncontracting provider services incurred, but not reported.

(B) Each plan licensed pursuant to this chapter prior to January 1, 1991, shall, upon that date, make a deposit of 50 percent of the amount required by subparagraph (A), and shall maintain additional cash or cash equivalents as defined by rule of the director, in the amount of 50 percent of the amount required by subparagraph (A), and shall make a deposit of 100 percent of the amount required by subparagraph (A) by January 1, 1992.

(C) The amount of the deposit shall be reasonably estimated as of the first day of the month and maintained for the remainder of the month.

(D) The deposit required by this paragraph is in addition to the deposit that may be required by rule of the director and is an allowable asset of the plan in the determination of tangible net equity as defined in subdivision (b) of Section 1300.76 of Title 10 of the California Code of Regulations. All income from the deposit shall be an asset of the plan and may be withdrawn by the plan at any time.

(E) A health care service plan that has made a deposit may withdraw that deposit or any part of the deposit if (i) a substitute deposit of cash or securities of equal amount and value is made, (ii) the fair market value exceeds the amount of the required deposit, or (iii) the required deposit under this paragraph is reduced or eliminated. Deposits, substitutions, or withdrawals may be made only with the prior written approval of the director, but approval shall not be required for the withdrawal of earned income.

(F) The deposit required under this section is in trust and may be used only as provided by this section. The director or, if a receiver has been appointed, the receiver shall use the deposit of an insolvent health care service plan, as defined in Sections 1394.7 and 1394.8, for payment of covered claims for services rendered by noncontracting providers under circumstances covered by the plan. All claims determined by the director or receiver, in his or her discretion, to be eligible for reimbursement under this section shall be paid on a pro rata basis based on assets available from the deposit to pay the ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the

health care service plan. The director may also use the deposit of an insolvent health care service plan for payment of any administrative costs associated with the administration of this section. The department, the director, and any employee of the department shall not be liable, as provided by Section 820.2 of the Government Code, for an injury resulting from an exercise of discretion pursuant to this section. Nothing in this section shall be construed to provide immunity for the acts of a receiver, except when the director is acting as a receiver.

(G) The director may, by regulation, prescribe the time, manner, and form for filing claims.

(H) The director may permit a plan to meet a portion of this requirement by a deposit of tangible assets acceptable to the director, the fair market value of which shall be determined on at least an annual basis by the director. The plan shall bear the cost of any appraisal or valuations required hereunder by the director.

(2) Maintain adequate insurance, or a guaranty arrangement approved in writing by the director, to pay for any loss to providers, subscribers, or enrollees claiming reimbursement due to the insolvency of the plan.

(b) Whenever the reimbursements described in this section exceed 10 percent of the plan's total costs for health care services over the immediately preceding six months, the plan shall file a written report with the director containing the information necessary to determine compliance with subdivision (a) no later than 30 business days from the first day of the month. Upon an adequate showing by the plan that the requirements of this section should be waived or reduced, the director may waive or reduce these requirements to an amount as the director deems sufficient to protect subscribers and enrollees of the plan consistent with the intent and purpose of this chapter.

(c) Every plan which reimburses providers of health care service on a fee-for-services basis; or which directly reimburses its subscribers or enrollees, to an extent exceeding 10 percent of its total payments for health care services, shall estimate and record in the books of account a liability for incurred and unreported claims. Upon a determination by the director that the estimate is inadequate, the director may require the plan to increase its estimate of incurred and unreported claims. Every plan shall promptly report to the director whenever these reimbursables exceed 10 percent of its total expenditures for health care services.

As used herein, the term "fee-for-services" refers to the situation where the amount of reimbursement paid by the plan to providers of service is determined by the amount and type of service rendered by the provider of service.

(d) In the event an insolvent plan covered by this section fails to pay a noncontracting provider sums for covered services owed, the provider shall first look to the uncovered expenditures insolvency

deposit or the insurance or guaranty arrangement maintained by the plan for payment. When a plan becomes insolvent, in no event shall a noncontracting provider, or agent, trustee, or assignee thereof, attempt to collect from the subscriber or enrollee sums owed for covered services by the plan or maintain any action at law against a subscriber or enrollee to collect sums owed by the plan for covered services without having first attempted to obtain reimbursement from the plan.

SEC. 125. Section 1380 of the Health and Safety Code is amended to read:

1380. (a) The department shall conduct periodically an onsite medical survey of the health delivery system of each plan. The survey shall include a review of the procedures for obtaining health services, the procedures for regulating utilization, peer review mechanisms, internal procedures for assuring quality of care, and the overall performance of the plan in providing health care benefits and meeting the health needs of the subscribers and enrollees.

(b) The survey shall be conducted by a panel of qualified health professionals experienced in evaluating the delivery of prepaid health care. The department shall be authorized to contract with professional organizations or outside personnel to conduct medical surveys and these contracts shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. These organizations or personnel shall have demonstrated the ability to objectively evaluate the delivery of health care by plans or health maintenance organizations.

(c) Surveys performed pursuant to this section shall be conducted as often as deemed necessary by the director to assure the protection of subscribers and enrollees, but not less frequently than once every three years. Nothing in this section shall be construed to require the survey team to visit each clinic, hospital office, or facility of the plan. To avoid duplication, the director shall employ, but is not bound by, the following:

(1) For hospital-based health care service plans, to the extent necessary to satisfy the requirements of this section, the findings of inspections conducted pursuant to Section 1279.

(2) For health care service plans contracting with the State Department of Health Services pursuant to the Waxman-Duffy Prepaid Health Plan Act, the findings of reviews conducted pursuant to Section 14456 of the Welfare and Institutions Code.

(3) To the extent feasible, reviews of providers conducted by professional standards review organizations, and surveys and audits conducted by other governmental entities.

(d) Nothing in this section shall be construed to require the medical survey team to review peer review proceedings and records conducted and compiled under Section 1370 or medical records. However, the director shall be authorized to require onsite review

of these peer review proceedings and records or medical records where necessary to determine that quality health care is being delivered to subscribers and enrollees. Where medical record review is authorized, the survey team shall insure that the confidentiality of physician-patient relationship is safeguarded in accordance with existing law and neither the survey team nor the director or the director's staff may be compelled to disclose this information except in accordance with the physician-patient relationship. The director shall ensure that the confidentiality of the peer review proceedings and records is maintained. The disclosure of the peer review proceedings and records to the director or the medical survey team shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1.

(e) The procedures and standards utilized by the survey team shall be made available to the plans prior to the conducting of medical surveys.

(f) During the survey the members of the survey team shall examine the complaint files kept by the plan pursuant to Section 1368. The survey report issued pursuant to subdivision (i) shall include a discussion of the plan's record for handling complaints.

(g) During the survey the members of the survey team shall offer such advice and assistance to the plan as deemed appropriate.

(h) (1) Survey results shall be publicly reported by the director as quickly as possible but no later than 180 days following the completion of the survey unless the director determines, in his or her discretion, that additional time is reasonably necessary to fully and fairly report the survey results. The director shall provide the plan with an overview of survey findings and notify the plan of deficiencies found by the survey team at least 90 days prior to the release of the public report.

(2) Reports on all surveys, deficiencies, and correction plans shall be open to public inspection except that no surveys, deficiencies, or correction plans shall be made public unless the plan has had an opportunity to review the report and file a response within 45 days of the date that the department provided the report to the plan. After reviewing the plan's response, the director shall issue a final report that excludes any survey information and legal findings and conclusions determined by the director to be in error, describes compliance efforts, identifies deficiencies that have been corrected by the plan by the time of the director's receipt of the plan's 45-day response, and describes remedial actions for deficiencies requiring longer periods to the remedy required by the director or proposed by the plan.

(3) The final report shall not include a description of "acceptable" or of "compliance" for any uncorrected deficiency.

(4) Upon making the final report available to the public, a single copy of a summary of the final report's findings shall be made

available free of charge by the department to members of the public, upon request. Additional copies of the summary may be provided at the department's cost. The summary shall include a discussion of compliance efforts, corrected deficiencies, and proposed remedial actions.

(5) If requested by the plan, the director shall append the plan's response to the final report issued pursuant to paragraph (2), and shall append to the summary issued pursuant to paragraph (4) a brief statement provided by the plan summarizing its response to the report. The plan may modify its response or statement at any time and provide modified copies to the department for public distribution no later than 10 days from the date of notification from the department that the final report will be made available to the public. The plan may file an addendum to its response or statement at any time after the final report has been made available to the public. The addendum to the response or statement shall also be made available to the public.

(6) Any information determined by the director to be confidential pursuant to statutes relating to the disclosure of records, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall not be made public.

(i) (1) The director shall give the plan a reasonable time to correct deficiencies. Failure on the part of the plan to comply to the director's satisfaction shall constitute cause for disciplinary action against the plan.

(2) No later than 18 months following release of the final report required by subdivision (h), the department shall conduct a follow-up review to determine and report on the status of the plan's efforts to correct deficiencies. The department's follow-up report shall identify any deficiencies reported pursuant to subdivision (h) that have not been corrected to the satisfaction of the director.

(3) If requested by the plan, the director shall append the plan's response to the follow-up report issued pursuant to paragraph (2). The plan may modify its response at any time and provide modified copies to the department for public distribution no later than 10 days from the date of notification from the department that the follow-up report will be made available to the public. The plan may file an addendum to its response at any time after the follow-up report has been made available to the public. The addendum to the response or statement shall also be made available to the public.

(j) The director shall provide to the plan and to the executive officer of the Board of Dental Examiners a copy of information relating to the quality of care of any licensed dental provider contained in any report described in subdivisions (h) and (i) that, in the judgment of the director, indicates clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment. Any confidential

information provided by the director shall not be made public pursuant to this subdivision. Notwithstanding any other provision of law, the disclosure of this information to the plan and to the executive officer shall not operate as a waiver of confidentiality. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Managed Care, the Director of the Department of Managed Care, the Board of Dental Examiners, or any officer, agent, employee, consultant, or contractor of the state or the department or the board for the release of any false or unauthorized information pursuant to this section, unless the release of that information is made with knowledge and malice.

(k) Nothing in this section shall be construed as affecting the director's authority pursuant to Article 7 (commencing with Section 1386) or Article 8 (commencing with Section 1390) of this chapter.

SEC. 126. Section 1380.1 of the Health and Safety Code is amended to read:

1380.1. (a) (1) With the department as the lead agency, the department and the State Department of Health Services shall convene a working group for the purpose of developing standards for quality audits of providers that provide services to enrollees pursuant to contracts governed by this chapter.

(2) The working group shall include, but not be limited to, representatives of health care service plans, consumer organizations, public and private purchasers of health care, and providers, including medical groups, independent practice associations, and health facilities.

(3) The working group shall be comprised so that a balance of perspectives of providers, plans, purchasers of health care, and consumers can reasonably be expected to be represented.

(4) The department may consult with the National Commission on Quality Assurance, the federal Health Care Financing Authority, and other organizations that have worked toward defining quality standards.

(5) The department shall consult with the State Department of Health Services on the implementation of this section.

(6) The Legislature recognizes that streamlining audits, and defining quality standards, are best achieved with consideration of federal regulatory and third party auditing standards.

(b) To the extent feasible, the goals of this working group shall include, but not be limited to, all of the following:

(1) Recommending ways to reduce duplicative audits of providers by health plans.

(2) Developing a core set of health care quality standards that can serve as baseline requirements for meeting audit standards for contracts governed by this chapter.

(3) Recommending data collection methods and processes that can result in better coordination of health care quality audits, lessen

the burden on providers, and maintain high quality standards for providers.

(4) Developing recommendations as to how health care service plans can best access quality information about providers in order to ensure higher quality standards than those core standards identified by the working group.

(5) Recommending standards for determining appropriate nonprofit organizations to conduct audits pursuant to the standards developed in this section.

(6) Determining how the results of quality audits shall be made available to the public.

(c) The department shall report to the Governor, the Department of Managed Care, the State Department of Health Services, and the appropriate committees of the Legislature, on or before January 1, 2000, its findings and recommendations pursuant to this section.

SEC. 127. Section 1380.3 of the Health and Safety Code is amended to read:

1380.3. Notwithstanding Section 1380, any plan that provides services solely to Medi-Cal beneficiaries pursuant to Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code shall not be subject to the requirements of Section 1380 upon the submission to the director of the medical survey audit for the same period conducted by the State Department of Health Services as part of the Medi-Cal contracting process, unless the director determines that an additional medical survey audit is required.

SEC. 128. Section 1381 of the Health and Safety Code is amended to read:

1381. (a) All records, books, and papers of a plan, management company, solicitor, solicitor firm, and any provider or subcontractor providing health care or other services to a plan, management company, solicitor, or solicitor firm shall be open to inspection during normal business hours by the director.

(b) To the extent feasible, all such records, books, and papers described in subdivision (a) shall be located in this state. In examining such records outside this state, the director shall consider the cost to the plan, consistent with the effectiveness of the director's examination, and may upon reasonable notice require that such records, books and papers, or a specified portion thereof, be made available for examination in this state, or that a true and accurate copy of such records, books and papers, or a specified portion thereof, be furnished to the director.

SEC. 129. Section 1382 of the Health and Safety Code is amended to read:

1382. (a) The director shall conduct an examination of the fiscal and administrative affairs of any health care service plan, and each person with whom the plan has made arrangements for administrative, management, or financial services, as often as

deemed necessary to protect the interest of subscribers or enrollees, but not less frequently than once every five years.

(b) The expense of conducting any additional or nonroutine examinations pursuant to this section, and the expense of conducting any additional or nonroutine medical surveys pursuant to Section 1380 shall be charged against the plan being examined or surveyed. The amount shall include the actual salaries or compensation paid to the persons making the examination or survey, the expenses incurred in the course thereof, and overhead costs in connection therewith as fixed by the director. In determining the cost of examinations or surveys, the director may use the estimated average hourly cost for all persons performing examinations or surveys of plans for the fiscal year. The amount charged shall be remitted by the plan to the director. If recovery of these costs cannot be made from the plan, these costs may be added to, but subject to the limitation of, the assessment provided for in subdivision (b) of Section 1356.

(c) Reports of all examinations shall be open to public inspection, except that no examination shall be made public, unless the plan has had an opportunity to review the examination report and file a statement or response within 45 days of the date that the department provided the report to the plan. After reviewing the plan's response, the director shall issue a final report that excludes any survey information, legal findings, or conclusions determined by the director to be in error, describes compliance efforts, identifies deficiencies that have been corrected by the plan on or before the time the director receives the plan's response, and describes remedial actions for deficiencies requiring longer periods for the remedy required by the director or proposed by the plan.

(d) If requested in writing by the plan, the director shall append the plan's response to the final report issued pursuant to subdivision (c). The plan may modify its response or statement at any time and provide modified copies to the department for public distribution not later than 10 days from the date of notification from the department that the final report will be made available to the public. The addendum to the response or statement shall also be made available to the public.

(e) Notwithstanding subdivision (c), any health care service plan that contracts with the State Department of Health Services to provide service to Medi-Cal beneficiaries pursuant to Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code may make a written request to the director to permit the State Department of Health Services to review its examination report.

(f) Upon receipt of the written request described in subdivision (e), the director may, consistent with Section 6254.5 of the Government Code, permit the State Department of Health Services to review the plan's examination report.

(g) Nothing in this section shall be construed as affecting the director's authority pursuant to Article 7 (commencing with Section 1386) or Article 8 (commencing with Section 1390).

SEC. 130. Section 1384 of the Health and Safety Code is amended to read:

1384. (a) Within 90 days after receipt of a request from the director, a plan or other person subject to this chapter shall submit to the director an audit report containing audited financial statements covering the 12-calendar months next preceding the month of receipt of the request, or another period as the director may require.

(b) On or before 105 days after the date of a notice of surrender or order of revocation, a plan shall file with the director a closing audit report containing audited financial statements. The reporting period for the closing audit report shall be the 12-month period preceding the date of the notice of surrender or order of revocation, or for another period as the director may specify. This report shall include other relevant information as specified by rule of the director. The director shall not consent to a surrender and an order of revocation shall not be considered final until the closing audit report has been filed with the director and all concerns raised by the director therefrom have been resolved by the plan, as determined by the director. For good cause, the director may waive the requirement of a closing audit report.

(c) Except as otherwise provided in this subdivision, each plan shall submit financial statements prepared as of the close of its fiscal year within 120 days after the close of the fiscal year. The financial statements referred to in this subdivision and in subdivisions (a) and (b) of this section shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant. The audits shall be conducted in accordance with generally accepted auditing standards and the rules and regulations of the director. However, financial statements from public entities or political subdivisions of the state whose audits are conducted by a county grand jury shall be submitted within 180 days after the close of the fiscal year and need not include a report, certificate, or opinion by an independent certified public accountant or an independent public accountant, and the audit shall be conducted in accordance with governmental auditing standards.

(d) A plan, solicitor, or solicitor firm shall make any special reports to the director as the director may from time to time require.

(e) For good cause and upon written request, the director may extend the time for compliance with subdivisions (a), (b), and (h) of this section.

(f) A plan, solicitor, or solicitor firm shall, when requested by the director, for good cause, submit its unaudited financial statement, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and statement of

income as of the date and for the period specified by the director. The director may require the submission of these reports on a monthly or other periodic basis.

(g) If the report, certificate, or opinion of the independent accountant referred to in subdivision (c) is in any way qualified, the director may require the plan to take any action as the director deems appropriate to permit an independent accountant to remove the qualification from the report, certificate, or opinion.

(h) The director may reject any financial statement, report, certificate, or opinion filed pursuant to this section by notifying the plan, solicitor, or solicitor firm required to make this filing of its rejection and the cause thereof. Within 30 days after the receipt of the notice, the person shall correct the deficiency, and the failure so to do shall be deemed a violation of this chapter. The director shall retain a copy of all filings so rejected.

(i) The director may make rules and regulations specifying the form and content of the reports and financial statements referred to in this section, and may require that these reports and financial statements be verified by the plan or other person subject to this chapter in a manner as the director may prescribe.

SEC. 131. Section 1385 of the Health and Safety Code is amended to read:

1385. Each plan, solicitor firm, and solicitor shall keep and maintain current such books of account and other records as the director may by rule require for the purposes of this chapter. Every plan shall require all providers who contract with the plan to report to the plan in writing all surcharge and copayment moneys paid by subscribers and enrollees directly to such providers, unless the director expressly approves otherwise.

SEC. 132. Section 1386 of the Health and Safety Code is amended to read:

1386. (a) The director 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 director 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 director:

(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 director.

(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 director.

(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 director pursuant to this chapter, or any order issued by the director 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 director 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 director 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 director 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 director 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. 133. Section 1387 of the Health and Safety Code is amended to read:

1387. (a) Any person who violates any provision of this chapter, or who violates any rule or order adopted or issued pursuant to this chapter, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the director in any court of competent jurisdiction.

(b) As applied to the civil penalties for acts in violation of this chapter, the remedies provided by this section and by other sections of this chapter are not exclusive, and may be sought and employed in any combination to enforce this chapter.

(c) No action shall be maintained to enforce any liability created under subdivision (a), unless brought before the expiration of four years after the act or transaction constituting the violation.

SEC. 134. Section 1388 of the Health and Safety Code is amended to read:

1388. (a) The director 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 director 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 director:

(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 director pursuant to the chapter, or any order issued by the director 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 director 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 director may issue an order hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The director 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 director 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. 135. Section 1389 of the Health and Safety Code is amended to read:

1389. (a) A person whose license has been revoked, or suspended for more than one year, may petition the director to reinstate the license as provided by Section 11522 of the Government Code. No petition may be considered if the petitioner is under criminal sentence for a violation of this chapter, or any offense which would constitute grounds for discipline, or denial of licensure under this chapter, including any period of probation or parole.

(b) A person who is barred, or suspended for more than one year, from acting as a solicitor or solicitor firm pursuant to Section 1388, or who is subject to an order, pursuant to subdivision (c) of Section 1386 or subdivision (d) of Section 1388, which by its terms is effective for more than one year, may petition the director to reduce by order such penalty in a manner generally consistent with the provisions of Section 11522 of the Government Code. No petition may be considered if the petitioner is under criminal sentence for a violation of this chapter, or any offense which would constitute grounds for discipline under this chapter, including any period of probation or parole.

(c) The petition for restoration shall be in the form prescribed by the director and the director may condition the granting of such petition upon such additional information and undertakings as the director may require in order to determine whether such person, if restored, would engage in business in full compliance with the objectives and provisions of this chapter and the rules and regulations adopted by the director pursuant to this chapter.

(d) The director may, by rule, prescribe a fee not to exceed five hundred dollars ($500) for the filing of a petition for restoration pursuant to this section. In addition, the director may condition the granting of such a petition to a plan upon payment of the assessment due and unpaid pursuant to subdivision (b) of Section 1356 as of the 15th day of December occurring within the preceding 12-calendar months and, if the plan's suspension or revocation was in effect for more than 12 months, upon the filing of a new plan application and the payment of the fee prescribed by subdivision (a) of Section 1356.

SEC. 136. Section 1389.1 of the Health and Safety Code is amended to read:

1389.1. (a) The director shall not approve any plan contract unless the director finds that the application conforms to both of the following requirements:

(1) All applications for coverage which include health-related questions shall contain clear and unambiguous questions designed to ascertain the health condition or history of the applicant.

(2) The application questions related to an applicant's health shall be based on medical information that is reasonable and necessary for medical underwriting purposes. The application shall include a prominently displayed notice that shall read:

"California law prohibits an HIV test from being required or used by health care service plans as a condition of obtaining coverage."

(b) Nothing in this section shall authorize the director to establish or require a single or standard application form for application questions.

SEC. 137. Section 1389.2 of the Health and Safety Code is amended to read:

1389.2. At the request of the director, a health care service plan shall provide a written statement of the actuarial basis for any medical underwriting decision on any application form, or contract issued or delivered to, or denied a resident of this state.

SEC. 138. Section 1391 of the Health and Safety Code is amended to read:

1391. (a) (1) The director 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 director 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 30 days from the date of service of the order, the order shall be deemed a final order of the director 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 director discloses, or reports or documents submitted to the director 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 director 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 director may require, upon a determination by the director that the action would be in the public interest.

SEC. 139. Section 1391.5 is added to the Health and Safety Code, to read:

1391.5. (a) If, after examination or investigation, the director has reasonable grounds to believe that irreparable loss and injury to the plan's enrollee or enrollees occurred or may occur unless the director acts immediately, the director may, by written order, addressed to that person, order the discontinuance of the unsafe or injurious practice. The order shall become effective immediately, but shall not become final except in accordance with this section.

(b) No order issued pursuant to this section shall become final except after notice to the affected person of the director's intention to make the order final and of the reasons for the finding. The director shall also notify that person that upon receiving a request for hearing by the plan, the matter shall be set for hearing to commence with 15 business days after receipt of the request, unless that person consents to have the hearing commence at a later date.

(c) If no hearing is requested within 15 days after the mailing or service of the required notice, and none is ordered by the director, the order shall become final on the 15th day without a hearing and shall not be subject to review by any court or agency notwithstanding subdivision (b) of Section 1397.

(d) If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the director shall have all of the powers granted under that act.

(e) If, upon conclusion of the hearing, it appears to the director that the affected person has conducted business in an unsafe or injurious manner, the director shall make the order of discontinuance final.

(f) For purposes of this section, 'person" includes any plan, solicitor firm, or any representative thereof, a solicitor, or any other person defined in subdivision (j) of Section 1345.

SEC. 140. Section 1392 of the Health and Safety Code is amended to read:

1392. (a) (1) Whenever it appears to the director 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 director may bring an action in superior court, or the director 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 director pursuant to

this chapter, or any order issued by the director pursuant to this chapter, or to obtain any other equitable relief.

(2) If the director determines that it is in the public interest, the director 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 director, 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. 141. 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 director 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 director or the director's successor in office, in his or her official capacity as such, and direct the director 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 director, 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 director 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 director acts immediately, the director, 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 director 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

director, 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 director 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 director 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 director'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 director 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 director from further proceedings and direct the director 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 director to take possession of the property, business, and assets of the plan, the director may appoint a conservator over the plan and require any bond of the conservator as the director deems proper. The conservator, under the direction of the director, 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 director, except that the conservator shall be able to pay necessary costs of the ongoing operation without formal order of the director. Whenever the director has taken possession of any plan pursuant to subdivision (b), the director 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 director'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 director 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 director 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 director 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 director 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 director as to the plan's financial condition.

(f) If the director becomes satisfied that it may be done safely and in the public interest, the director 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 director prescribes.

SEC. 142. Section 1393.5 of the Health and Safety Code is amended to read:

1393.5. (a) A person who violates Section 1349, or any person who directly or indirectly participates in the direction of the management or policies of the person in violation of Section 1349, including, but not limited to, any officer, director, partner, or other person occupying a principal management or supervisory position, shall be liable for civil penalties as follows:

(1) A sum not more than two thousand five hundred dollars ($2,500), and (2) a sum not exceeding five hundred dollars ($500) for each subscriber under an individual or group plan contract which was entered into or renewed while such person was in violation of Section 1349.

(b) The penalty specified in paragraph (2) of subdivision (a) shall be imposed only if one or more of the following occurs:

(1) The solicitation of the entry into or renewal of such contract, or of any subscription or enrollment thereunder, included the use by the plan or a representative of the plan of any advertising, evidence of coverage, or disclosure form which was untrue, misleading, or deceptive.

(2) The contract is not in compliance with this chapter, or the rules adopted pursuant to this chapter.

(3) The plan does not have a financially sound operation and adequate provision against the risk of insolvency.

(4) The plan has operated in violation of the provisions of subdivision (a), (b), (c), (d), or (e) of Section 1367.

(5) The plan has not complied with the provisions of Section 1379.

(c) The civil penalty may be assessed and recovered only in a civil action. The cause of action may be brought in the name of the people of the State of California by the Attorney General or the director, as determined by the director.

SEC. 143. Section 1393.6 of the Health and Safety Code is amended to read:

1393.6. For violations of Article 3.1 (commencing with Section 1357) and Article 3.15 (commencing with Section 1357.50), the commissioner may, after appropriate notice and opportunity for hearing, by order levy administrative penalties as follows:

(a) Any person, solicitor, or solicitor firm, other than a health care service plan, who willfully violates any provision of this chapter, or who willfully violates any rule or order adopted or issued pursuant to this chapter, is liable for administrative penalties of not less than two hundred fifty dollars ($250) for each first violation, and of not less than one thousand dollars ($1,000) and not more than two thousand five hundred dollars ($2,500) for each subsequent violation.

(b) Any health care service plan that willfully violates any provision of this chapter, or that willfully violates any rule or order adopted or issued pursuant to this chapter, is liable for administrative penalties of not less than two thousand five hundred dollars ($2,500) for each first violation, and of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000) for each second violation, and of not less than fifteen thousand dollars ($15,000) and not more than one hundred thousand dollars ($100,000) for each subsequent violation.

(c) The administrative penalties shall be paid to the Managed Care Fund.

(d) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the director to enforce the provisions of this chapter.

SEC. 144. Section 1394 of the Health and Safety Code is amended to read:

1394. The civil, criminal, and administrative remedies available to the director pursuant to this article are not exclusive, and may be sought and employed in any combination deemed advisable by the director to enforce the provisions of this chapter.

SEC. 145. Section 1394.1 of the Health and Safety Code is amended to read:

1394.1. Notwithstanding any other provision of law, the director may file a verified complaint for involuntary dissolution of a health care service plan on any one or more of the grounds specified in subdivision (b) of Section 1386. The complaint shall be filed in the superior court of the county where the principal executive office of the health care service plan is located or, if the principal executive

office of the health care service plan is not located in this state, or the health care service plan has no such office, the County of Sacramento.

SEC. 146. Section 1394.3 of the Health and Safety Code is amended to read:

1394.3. Except as provided for in Section 1394.1, and 1394.2, the involuntary dissolution of a health care service plan shall be in accordance with either of the following:

(a) Chapter 18 (commencing with Section 1800) of Division 1 of Title 1 of the Corporations Code, if the plan is incorporated under the General Corporation Law.

(b) Chapter 15 (commencing with Section 8510) of Part 3 of Division 2 of Title 1 of the Corporations Code if the plan is incorporated under the Nonprofit Corporation Law.

SEC. 147. Section 1394.5 of the Health and Safety Code is amended to read:

1394.5. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule, regulation, or order adopted hereunder, whether or not the person has filed a power of attorney under subdivision (j) of Section 1351, and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the appointment of the director or the director's successor in office to be the attorney in fact to receive any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator which arises out of that conduct and which is brought under this chapter or any rule, regulation, or order adopted hereunder, with the same force and validity as if personally served. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless the plaintiff or petitioner, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and in a court action, an affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. In the case of administrative orders issued by the director, the affidavit of compliance need not be filed with the administrative tribunal unless the respondent requests a hearing.

SEC. 148. Section 1394.7 of the Health and Safety Code is amended to read:

1394.7. (a) As used in this section the following definitions shall apply:

(1) "Health care service plan" means any plan as defined in Section 1345, but this section does not apply to specialized health care service contracts.

(2) "Carrier" means a health care service plan, an insurer issuing group disability coverage which covers hospital, medical, or surgical expenses, a nonprofit hospital service plan, or any other entity responsible for either the payment of benefits or the provision of hospital, medical, and surgical benefits under a group contract.

(3) "Insolvency" means that the director has determined that the health care service plan is not financially able to provide health care services to its enrollees and (A) the director has taken an action pursuant to Section 1386, 1391, or 1399, or (B) an order requested by the director or the Attorney General has been issued by the superior court under Section 1392, 1393, or 1394.1.

(b) In the event of the insolvency of a health care service plan and upon order of the director, any health care service plan which the director determines to have sufficient health care delivery resources and sufficient financial and administrative capacity and that participated in the enrollment process with the insolvent health care service plan at the last regular open enrollment period of a group shall offer enrollees of the group in the insolvent health care service plan a 30-day enrollment period commencing upon the date specified by the director. Each health care service plan shall offer enrollees of the group in the insolvent health care service plan the same coverages and rates that it offered to enrollees of the group at the last regular open enrollment period of the group. Coverage shall be effective upon receipt by the successor plan of an application for enrollment by or on behalf of a subscriber or enrollee of the insolvent plan. The director shall send a notice of the insolvency of a health care service plan to the Insurance Commissioner.

(c) If no other carrier had been offered to groups enrolled in the insolvent health care service plan, or if the director determines that the other carriers do not include a sufficient number of health care service plans that have adequate health care delivery resources or the financial or administrative capacity to assure that health care services will be available and accessible to all of the group enrollees of the insolvent health care service plan, then the director shall allocate equitably the insolvent health care service plan's group contracts for the groups, except for Medi-Cal contracts made pursuant to Section 14200 of the Welfare and Institutions Code, among all health care service plans which operate within at least a portion of the service area of the insolvent health care service plan, taking into consideration the health care delivery resources and the financial and administrative capacity of each health care service plan. The director shall also have the authority to allocate equitably enrollees, except Medi-Cal enrollees, if he or she has been unable to successfully place them through the open enrollment procedure in subdivision (b). The director shall make every reasonable effort to allocate enrollees within 30 days of the insolvency of the plan, but not later than 45 days after insolvency. Each health care service plan to which a group or groups are so allocated shall offer the group or

groups the health care service plan's coverage which is most similar to each group's coverage with the insolvent health care service plan, as determined by the director, at rates determined in accordance with the successor health care service plan's existing rating methodology. Coverage shall be effective upon the date specified by the director. Further, except to the extent benefits for any condition would have been reduced or excluded under the insolvent health care service plan's contract or policy, no provision in a successor health care service plan's contract of coverage that would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted on the effective date of the enrollee's assignment to the succeeding health care service plan shall be applied with respect to those enrollees validly covered under the insolvent health care service plan's contract or policy on the date of the assignment.

The State Department of Health Services shall have the authority to allocate Medi-Cal enrollees to other carriers with valid Medi-Cal contracts, which operate within the same service area of an insolvent Medi-Cal contractor and that have sufficient capacity to absorb the Medi-Cal enrollees allocated to them.

(d) The director shall also allocate equitably the insolvent health care service plan's nongroup enrollees among all health care service plans which operate within at least a portion of the service area of the insolvent health care service plan, taking into consideration the health care delivery resources or the financial and administrative capacity of each health care service plan. Each health care service plan to which nongroup enrollees are allocated shall offer the nongroup enrollees the health care service plan's most similar coverage for individual or conversion coverage, as determined by the director, taking into consideration his or her type of coverage in the insolvent health care service plan, at rates determined in accordance with the successor health care service plan's existing rating methodology. Coverage shall be effective upon the date specified by the director. Further, except to the extent benefits for any condition would have been reduced or excluded under the insolvent health care service plan's contract or policy, no provision in a successor health care service plan's contract of coverage that would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted on the effective date of the enrollee's assignment to the succeeding health care service plan shall be applied with respect to those enrollees validly covered under the insolvent health care service plan's contract or policy on the date of the assignment. Successor health care service plans which do not offer direct nongroup enrollment may aggregate all allocated nongroup enrollees into one group for rating and coverage purposes.

(e) Contracting providers shall continue to provide services to enrollees of an insolvent plan until the effective date of an enrollee's coverage in a successor plan selected pursuant to either open

enrollment or the allocation process but in no event for the period exceeding that required by their contract or 45 days in the case of allocation, whichever is greater; or for a period exceeding that required by their contract or 30 days in the case of open enrollment, whichever is greater.

(f) The failure to comply with an order under this section shall constitute a violation of this section.

SEC. 149. Section 1394.8 of the Health and Safety Code is amended to read:

1394.8. (a) As used in this section:

(1) "Carrier" means a specialized health care service plan, and any of the following entities which offer coverage comparable to the coverages offered by a specialized health care service plan: an insurer issuing group disability coverage; a nonprofit hospital service plan; or any other entity responsible for either the payment of benefits for or the provisions of services under a group contract.

(2) "Insolvency" means that the director has determined that the specialized health care service plan is not financially able to provide specialized health care services to its enrollees and (A) the director has taken an action pursuant to Section 1386, 1391, 1399, or (B) an order requested by the director or the Attorney General has been issued by the superior court under Sections 1392, 1393, or 1394.1.

(3) "Specialized health care service plan" means any plan authorized to issue only specialized health care service plan contracts as defined in Section 1345.

(b) In the event of the insolvency of a specialized health care service plan and upon order of the director, any specialized health care service plan which the director determines to have sufficient health care delivery resources and sufficient financial and administrative capacity and that participated in the enrollment process with the insolvent specialized health care service plan at the last regular open enrollment period of a group for the same type of specialized health care services shall offer enrollees of the group in the insolvent specialized health care service plan a 30-day enrollment period commencing upon the date specified by the director. Each specialized health care service plan shall offer enrollees of the group in the insolvent specialized health care service plan the same specialized coverage and rates that it offered to the enrollees of the group at its last regular open enrollment period. Coverage shall be effective upon receipt by the successor plan of an application for enrollment by or on behalf of a subscriber or enrollee of the insolvent plan. The director shall send a notice of the insolvency of a specialized health care service plan to the Insurance Commissioner.

(c) If no other carrier for the same type of specialized health care services had been offered to some groups enrolled in the insolvent specialized health care service plan, or if the director determines that the other carriers do not include a sufficient number of specified health care service plans which have adequate health care delivery

resources or the financial and administrative capacity to assure that the specialized health care services will be available and accessible to all of the group enrollees of the insolvent specialized health care service plan, then the director shall allocate equitably the insolvent specialized health care service plan's group contracts for the groups among all specialized health care service plans which offer the same type of specialized health care services as the insolvent plan and which operate within at least a portion of the service area of the insolvent specialized health care service plan, taking into consideration the health care delivery resources and the financial and administrative capacity of each specialized health care service plan. The director shall also have the authority to allocate equitable enrollees if he or she has been unable to successfully place them through the open enrollment procedure in subdivision (b). The director shall make every reasonable effort to allocate enrollees within 30 days of the insolvency of the plan, but not later than 45 days after insolvency. Each specialized health care service plan to which a group or groups is so allocated shall offer such group or groups the specialized health care service plan's coverage which is most similar to each group's coverage with the insolvent specialized health care service plan as determined by the director, at rates determined in accordance with the successor specialized health care service plan's existing rating methodology. Coverage shall be effective on a date specified by the director. Further, except to the extent benefits for any condition would have been reduced or excluded under the insolvent specialized health care service plan's contract or policy, no provision in a successor specialized health care service plan's contract of coverage which would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted on the effective date of the enrollee's assignment to the succeeding plan shall be applied with respect to those enrollees validly covered under the insolvent specialized health care service plan's contract or policy on the date of the assignment.

(d) The director shall also allocate equitably the insolvent specialized health care service plan's nongroup enrollees among all specialized health care services which offer the same type of specialized health care services as the insolvent plan and which operate within at least a portion of the insolvent specialized health care service plan's service area, taking into consideration the health care delivery resources and the financial and administrative capacity of each specialized health care service plan. Each specialized health care service plan to which nongroup enrollees are allocated shall offer the nongroup enrollees the health care service plan's most similar coverage for individual or conversion coverage, as determined by the director, taking into consideration his or her type of coverage in the insolvent specialized health care service plan at rates determined in accordance with the successor specialized health care service plan's existing rating methodology. Coverage shall be

effective on the date specified by the director. Further, except to the extent benefits for any condition would have been reduced or excluded under the insolvent specialized health care service plan's contract or policy, no provision in a successor specialized health care service plan's contract of coverage which would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted on the effective date of the enrollee's assignment to the succeeding plan shall be applied with respect to those enrollees validly covered under the insolvent specialized health care service plan's contract or policy on the date of the assignment. Successor specialized health care service plans which do not offer direct nongroup enrollment may aggregate all allocated nongroup enrollees into one group for rating and coverage purposes.

(e) Contracting providers shall continue to provide services to enrollees of an insolvent plan until the effective date of an enrollee's coverage in a successor plan selected pursuant to either open enrollment or the allocation process but in no event for the period exceeding that required by their contract or 45 days in the case of allocation, whichever is greater; or for a period exceeding that required by their contract or 30 days in the case of open enrollment, whichever is greater.

(f) Failure to comply with an order pursuant to this section shall constitute a violation of this section.

SEC. 150. Section 1395.5 of the Health and Safety Code is amended to read:

1395.5. (a) Except as provided in subdivisions (b) and (c), no contract that is issued, amended, renewed, or delivered on or after January 1, 1999, between a health care service plan, including a specialized health care service plan, and a provider shall contain provisions that prohibit, restrict, or limit the health care provider from advertising.

(b) Nothing in this section shall be construed to prohibit plans from establishing reasonable guidelines in connection with the activities regulated pursuant to this chapter, including those to prevent advertising that is, in whole or in part, untrue, misleading, deceptive, or otherwise inconsistent with this chapter or the rules and regulations promulgated thereunder. For advertisements mentioning a provider's participation in a plan, nothing in this section shall be construed to prohibit plans from requiring each advertisement to contain a disclaimer to the effect that the provider's services may be covered for some, but not all, plan contracts, or that plan contracts may cover some, but not all, provider services.

(c) Nothing in this section is intended to prohibit provisions or agreements intended to protect service marks, trademarks, trade secrets, or other confidential information or property. If a health care provider participates on a provider panel or network as a result of a direct contractual arrangement with a health care service plan that, in turn, has entered into a direct contractual arrangement with

another person or entity, pursuant to which enrollees, subscribers, insureds, and other beneficiaries of that other person or entity may receive covered services from the health care provider, then nothing in this section is intended to prohibit reasonable provisions or agreements in the direct contractual arrangement between the health care provider and the health care service plan that protect the name or trade name of the other person or entity or require that the health care provider obtain the consent of the health care service plan prior to the use of the name or trade name of the other person or entity in any advertising by the health care provider.

(d) Nothing in this section shall be construed to impair or impede the authority of the director to regulate advertising, disclosure, or solicitation pursuant to this chapter.

SEC. 151. Section 1396 of the Health and Safety Code is amended to read:

1396. It is unlawful for any person willfully to make any untrue statement of material fact in any application, notice, amendment, report, or other submission filed with the director under this chapter or the regulations adopted thereunder, or willfully to omit to state in any application, notice, or report any material fact which is required to be stated therein.

SEC. 152. Section 1397 of the Health and Safety Code is amended to read:

1397. (a) Whenever reference is made in this chapter to a hearing before or by the director, the hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the director shall have all of the powers granted under that act.

(b) Every final order, decision, license, or other official act of the director under this chapter is subject to judicial review in accordance with the law.

SEC. 153. Section 1397.5 of the Health and Safety Code is amended to read:

1397.5. (a) The director shall make and file annually with the Department of Managed Care as a public record, an aggregate summary of grievances against plans filed with the director by enrollees or subscribers. This summary shall include at least all of the following information:

(1) The total number of grievances filed.

(2) The types of grievances.

(b) The summary set forth in subdivision (a) shall include the following disclaimer:

THIS INFORMATION IS PROVIDED FOR STATISTICAL PURPOSES ONLY. THE DIRECTOR OF THE DEPARTMENT OF MANAGED CARE HAS NEITHER INVESTIGATED NOR DETERMINED WHETHER THE GRIEVANCES COMPILED WITHIN THIS SUMMARY ARE REASONABLE OR VALID.

(c) Nothing in this section shall require or authorize the disclosure of grievances filed with or received by the director and made confidential pursuant to any other provision of law including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Nothing in this section shall affect any other provision of law including, but not limited to, the California Public Records Act and the Information Practices Act of 1977.

SEC. 154. Section 1397.6 of the Health and Safety Code is amended to read:

1397.6. The director may contract with necessary medical consultants to assist with the health care program. These contracts shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 155. Section 1398 of the Health and Safety Code is amended to read:

1398. Neither the director nor any employee of the department shall be precluded from subscribing to or enrolling in any plan which is subject to the provisions of this chapter, subject to such rules as may be adopted hereunder or pursuant to other proper authority.

SEC. 156. Section 1399 of the Health and Safety Code is amended to read:

1399. (a) Surrender of a license as a health plan becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time as the director may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after the application is filed. If this proceeding is pending or instituted, surrender becomes effective at the time and upon the conditions as the director by order determines.

(b) If the director finds that any plan is no longer in existence, or has ceased to do business or has failed to initiate business activity as a licensee within six months after licensure, or cannot be located after reasonable search, the director may by order summarily revoke the license of the plan.

(c) The director may summarily suspend or revoke the license of a plan upon (1) failure to pay any fee required by this chapter within 15 days after notice by the director that the fee is due and unpaid, (2) failure to file any amendment or report required under this chapter within 15 days after notice by the director that the report is due, (3) failure to maintain any bond or insurance pursuant to Section 1376, (4) failure to maintain a deposit, insurance, or guaranty arrangement pursuant to Section 1377, or (5) failure to maintain a deposit pursuant to Section 1300.76.1 of Title 10 of the California Code of Regulations.

SEC. 157. Section 1399.1 of the Health and Safety Code is amended to read:

1399.1. (a) All orders and other actions taken by the Commissioner of Corporations pursuant to the authority contained in subdivision (c) of Section 1350 on or before September 30, 1977, and all administrative or judicial decisions or orders relating to the same and all conditions imposed upon the same remain in effect against a plan holding a transitional license.

(b) The Knox-Mills Health Plan Act as in effect prior to its repeal continues to govern all suits, actions, prosecutions or proceedings which are pending or which may be initiated under subdivision (c) of Section 1350 on the basis of facts or circumstances occurring on or before September 30, 1977.

SEC. 158. Section 1399.70 of the Health and Safety Code is amended to read:

1399.70. (a) In addition to the information required by subdivision (a) of Section 1399.73, a nonprofit health care service plan submitting an application to the director to restructure or convert its activities pursuant to this article shall submit to the director a copy of all of its original and amended articles of incorporation and bylaws, as well as a report summarizing the activities undertaken by the plan to meet its nonprofit obligations as directed by the director.

(b) The report required by this section shall include a summary of the following:

(1) The nature of public benefit or charitable activities undertaken by the plan.

(2) The expenditures incurred by the plan on these public benefit or charitable activities.

(3) The plan's procedure for avoiding conflicts of interest involving public benefit or charitable activities and a summary of any conflicts that have occurred and the manner in which they were resolved.

(c) The report required by this section shall also include a written plan that specifies on a projected basis the information required by subdivision (b) for the immediately following fiscal year.

(d) When requested by the director, the plan shall promptly supplement the report to include any additional information as the director deems necessary to ascertain whether the plan's assets are appropriately being used by the plan to meet its nonprofit obligations.

(e) For purposes of this article, a "nonprofit health care service plan" includes a plan formed under or subject to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code.

SEC. 159. Section 1399.71 of the Health and Safety Code is amended to read:

1399.71. (a) Any nonprofit health care service plan that intends to restructure its activities as defined in subdivision (d) shall, prior to restructuring, secure approval from the director.

(b) Every nonprofit health care service plan that applies to the department to restructure its activities shall submit for approval by the department a public benefit program that identifies activities to be undertaken by the nonprofit health care service plan following restructuring to continue to meet its nonprofit public benefit obligations. The program shall include all information required pursuant to subdivisions (b) and (c) of Section 1399.70.

(c) The director shall apply the requirements of Section 1399.72 to the public benefit program submitted for approval as part of a restructuring proposal submitted pursuant to subdivision (b) of this section. The set-aside requirement in paragraph (1) of subdivision (c) of Section 1399.72 shall apply only to the fair value of the portion of the nonprofit health care service plan involved in the restructuring, as determined by the director.

(d) (1) For the purposes of this section, a "restructuring" or "restructure" by a nonprofit health care service plan means the sale, lease, conveyance, exchange, transfer, or other similar disposition of a substantial amount of a nonprofit health care service plan's assets, as determined by the director, to a business or entity carried on for profit. Nothing in this section shall be construed to prohibit the director from consolidating actions taken by a plan for the purpose of treating the consolidated actions as a restructuring or restructure of the plan.

(2) For the purposes of this section, a "restructuring" or "restructure" by a nonprofit health care service plan shall not include any sales or purchases undertaken in the normal and ordinary course of plan business. The director may request information from the plan to verify that transactions qualify as occurring in the normal and ordinary course of plan business, and are not subject to the requirements of subdivision (e).

(e) Notwithstanding that a transaction or consolidated transactions involve a substantial amount of a nonprofit health care service plan's assets and are not in the normal and ordinary course of plan business, a "restructuring" or "restructure" by a nonprofit health care service plan shall not include any of the following transactions:

(1) Investments in a wholly owned subsidiary of the nonprofit health care service plan in which all of the following occur:

(A) Any profit from the investment will not inure to the benefit of any individual.

(B) The investment is fundamentally consistent with and advances the public benefit, charitable, or mutual benefit purpose of the plan.

(C) The investment does not adversely impact the plan's ability to fulfill its public benefit, charitable, or mutual benefit purposes.

(D) No officer or director of the plan has any financial interest constituting a conflict of interest in the investments.

(E) The investment results in the provision of services, goods, or insurance to or for the benefit of the plan or its members, enrollees, or groups.

(2) Sales or purchases of plan assets, including interests in wholly owned subsidiaries and in joint ventures, partnerships, and other investments in for-profit entities, in which all of the following occur:

(A) Any profit from the sale will not inure to the benefit of any individual.

(B) The sale or purchase is fundamentally consistent with and advances the public benefit, charitable, or mutual benefit purposes of the plan.

(C) The plan receives all proceeds from the sale.

(D) No officer or director of the plan has any financial interest constituting a conflict of interest in the sale or purchase.

(E) The transaction is conducted at arm's length and for fair market value.

(F) The sale or purchase does not adversely impact the plan's ability to fulfill its public benefit, charitable, or mutual benefit purposes.

(3) Investments in or joint ventures and partnerships with a for-profit entity in which all of the following occur:

(A) Any profit will not inure to the benefit of any individual.

(B) The mission or purpose of the investment, joint venture, or partnership is fundamentally consistent with the public benefit, charitable, or mutual benefit purposes of the plan.

(C) No officer or director of the plan has any financial interest constituting a conflict of interest in the investment, joint venture, or partnership.

(D) The transaction is conducted at arm's length and for fair market value.

(E) The investment, joint venture, or partnership furthers the plan's ability to fulfill its public benefit, charitable, or mutual benefit purposes.

(F) The investment, joint venture, or partnership results in the provision of services, goods, or insurance to or for the benefit of the plan or its members, enrollees, or groups.

The sharing of profits or earnings upon a reasonable and equitable basis reflecting the contribution of other participants to the investment, joint venture, or partnership or the success thereof shall not constitute private inurement.

(f) All transactions subject to the exemptions listed in subdivision (e) may not be executed by the plan without the written prior approval of the director. In the application for material modification seeking approval, the plan shall demonstrate that the proposed transaction meets all of the relevant conditions for exemption required by subdivision (e).

(g) Prior to issuing a decision to approve an application for a material modification involving a transaction that is exempt pursuant to subdivision (e), the director shall issue a public notice of the filing of the application and may seek public review and comment on the director's determination that the transaction is exempt under subdivision (e).

(h) The director may approve or deny the material modification request, or approve the request with conditions necessary to satisfy the requirements of this section, taking into consideration any public comments submitted to the director.

SEC. 160. Section 1399.72 of the Health and Safety Code is amended to read:

1399.72. (a) Any health care service plan that intends to convert from nonprofit to for-profit status, as defined in subdivision (b), shall, prior to the conversion, secure approval from the director.

(b) For the purposes of this section, a "conversion" or "convert" by a nonprofit health care service plan means the transformation of the plan from nonprofit to for-profit status, as determined by the director.

(c) Prior to approving a conversion, the director shall find that the conversion proposal meets all of the following charitable trust requirements:

(1) The fair market value of the nonprofit plan is set aside for appropriate charitable purposes. In determining fair market value, the director shall consider, but not be bound by, any market-based information available concerning the plan.

(2) The set-aside shall be dedicated and transferred to one or more existing or new tax-exempt charitable organizations operating pursuant to Section 501(c)(3) (26 U.S.C.A. Sec. 501(c)(3)) of the federal Internal Revenue Code. The director shall consider requiring that a portion of the set-aside include equity ownership in the plan. Further, the director may authorize the use of a federal Internal Revenue Code Section 501(c)(4) organization (26 U.S.C.A. Sec. 501(c)(4)) if, in the director's view, it is necessary to ensure effective management and monetization of equity ownership in the plan and if the plan agrees that the Section 501(c)(4) organization will be limited exclusively to these functions, that funds generated by the monetization shall be transferred to the Section 501(c)(3) organization except to the extent necessary to fund the level of activity of the Section 501(c)(4) organization as may be necessary to preserve the organization's tax status, that no funds or other resources controlled by the Section 501(c)(4) organization shall be expended for campaign contributions, lobbying, or other political activities, and that the Section 501(c)(4) organization shall comply with reporting requirements that are applicable to Section 501(c)(3) organizations, and that the 501(c)(4) organization shall be subject to any other requirements imposed upon 501(c)(3) organizations that the director determines to be appropriate.

(3) Each 501(c)(3) or 501(c)(4) organization receiving a set-aside, its directors and officers, and its assets including any plan stock, shall be independent of any influence or control by the health care service plan and its directors, officers, subsidiaries, or affiliates.

(4) The charitable mission and grant-making functions of the charitable organization receiving any set-aside shall be dedicated to serving the health care needs of the people of California.

(5) Every 501(c)(3) or 501(c)(4) organization that receives a set-aside under this section shall have in place procedures and policies to prohibit conflicts of interest, including those associated with grant-making activities that may benefit the plan, including the directors, officers, subsidiaries, or affiliates of the plan.

(6) Every 501(c)(3) or 501(c)(4) organization that receives a set-aside under this section shall demonstrate that its directors and officers have sufficient experience and judgment to administer grant-making and other charitable activities to serve the state's health care needs.

(7) Every 501(c)(3) or 501(c)(4) organization that receives a set-aside under this section shall provide the director and the Attorney General with an annual report that includes a detailed description of its grant-making and other charitable activities related to its use of the set-aside received from the health care service plan. The annual report shall be made available by the director and the Attorney General for public inspection, notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Each organization shall submit the annual report for its immediately preceding fiscal year within 120 days after the close of that fiscal year. When requested by the director or the Attorney General, the organization shall promptly supplement the report to include any additional information that the director or the Attorney General deems necessary to ascertain compliance with this article.

(8) The plan has satisfied the requirements of this chapter, and a disciplinary action pursuant to Section 1386 is not warranted against the plan.

(d) The plan shall not file any forms or documents required by the Secretary of State in connection with any conversion or restructuring until the plan has received an order of the director approving the conversion or restructuring, or unless authorized to do so by the director.

SEC. 161. Section 1399.73 of the Health and Safety Code is amended to read:

1399.73. (a) An application for a conversion or restructuring shall contain the information the director may require, by rule or order.

(b) The director shall charge a health care service plan an application filing fee. The fee for filing an application shall be the actual cost of processing the application, including the overhead

costs. The filing fee shall include the costs of undertaking the activities described in subdivisions (c), (d), and (e) of Section 1399.74.

(c) The director may contract with experts or consultants to assist the director in reviewing the application. Contract costs shall not exceed an amount that is reasonable and necessary to review the application. Any contract entered into under this subdivision shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The applicant shall promptly pay the director, upon request, for all contract costs.

SEC. 162. Section 1399.74 of the Health and Safety Code is amended to read:

1399.74. (a) By July 1, 1996, the director shall adopt regulations, on an emergency basis, that specify the application procedures and requirements for the restructuring or conversion of nonprofit health care service plans. This subdivision shall not be construed to limit or otherwise restrict the director's authority to adopt regulations under Section 1344, including, but not limited to, any additional regulations to implement this article.

(b) Upon receiving an application to restructure or convert, the director shall publish a notice in one or more newspapers of general circulation in the plan's service area describing the name of the applicant, the nature of the application, and the date of receipt of the application. The notice shall indicate that the director will be soliciting public comments and will hold a public hearing on the application. The director shall require the plan to publish a written notice concerning the application pursuant to conditions imposed by rule or order.

(c) Any applications, reports, plans, or other documents under this article shall be public records, subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and regulations adopted by the director thereunder. The director shall provide the public with prompt and reasonable access to public records relating to the restructuring and conversion of health care service plans. Access to public records covered by this section shall be made available no later than one month prior to any solicitation for public comments or public hearing scheduled pursuant to this article.

(d) Prior to approving any conversion or restructuring, the director shall solicit public comments in written form and shall hold at least one public hearing concerning the plan's proposal to comply with the set- aside and other conditions required under this article.

(e) The director may disapprove any application to restructure or convert if the application does not meet the requirements of this chapter or of the Nonprofit Corporation Law (Div. 2 (commencing with Sec. 5000), Title 1, Corp. C.), including any requirements imposed by rule or order of the director.

SEC. 163. Section 1399.75 of the Health and Safety Code is amended to read:

1399.75. (a) This article shall apply to the restructuring or conversion of nonprofit mutual benefit health care service plans to the extent these plans have held or currently hold assets subject to a charitable trust obligation, as determined by the director.

(b) Nonprofit mutual benefit health care service plans that do not have, or have only a partial, charitable trust obligation, and that intend to convert or restructure their activities shall, prior to the conversion or restructuring, secure approval from the director.

(c) Prior to approving a mutual benefit health care service plan restructuring or conversion under subdivision (b), the director shall find that the plan has complied with its noncharitable obligations including, but not limited to, any obligations set forth in its articles of incorporation regarding the dedication and distribution of assets.

(d) The director, in carrying out the department's responsibilities under subdivision (c), may apply, to the extent appropriate in each case as determined by the director, the beneficiary protections authorized in this act, including, but not limited to, protections concerning the fair market value of assets, the avoidance of conflicts of interest, and the avoidance of undue influence or control, with respect to a mutual benefit plan's proposed disposition of assets.

(e) Nothing in this section shall be construed to limit the director's, Attorney General's, or a court's authority under existing law to impose charitable trust obligations upon any or all of the assets of a mutual benefit corporation or otherwise treat a mutual benefit corporation in the same manner as a public benefit corporation.

SEC. 164. Section 11758.47 of the Health and Safety Code is amended to read:

11758.47. Service providers may assist Medi-Cal beneficiaries, upon request, to file a fair hearing request in accordance with Chapter 7 (commencing with Section 10950) of Part 2 of Division 9 of the Welfare and Institutions Code, or may inform Medi-Cal beneficiaries about the Department of Managed Care's toll-free telephone number for health care service plan members or the State Department of Health Services' ombudsman for Medi-Cal beneficiaries enrolled in Medi-Cal managed care plans.

SEC. 165. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the

same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities, retirement programs, services, and facilities, chemical dependency programs, services, and facilities, or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health care facilities," as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. "Health facilities," as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including without limitation real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, and Section 32106.

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of or from the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown

Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of subdivision (p) of Section 32121 when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code and Section 32106. The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Managed Care, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(t) 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. 166. Section 34943 of the Health and Safety Code is amended to read:

34943. The provisions of the Corporate Securities Law of 1968 not inconsistent with this chapter apply to a corporation formed under this chapter.

SEC. 167. Section 102910 of the Health and Safety Code is amended to read:

102910. For the purpose of conducting the three-year study required pursuant to Section 102905, the department is hereby encouraged to contract with a federally recognized tribe or tribal organization or an American Indian-controlled health care corporation or research institution having a record of good standing with the Department of Managed Care and the Indian Health program within the department, and established competence in the area of records management.

SEC. 168. Section 127580 of the Health and Safety Code is amended to read:

127580. The office, after consultation with the Insurance Commissioner, the Director of the Department of Managed Care, the State Director of Health Services, and the Director of Industrial Relations, shall adopt a California uniform billing form format for professional health care services and a California uniform billing form format for institutional provider services. The format for professional health care services shall be the format developed by the National Uniform Claim Form Task Force. The format for institutional provider services shall be the format developed by the National Uniform Billing Committee. The formats shall be acceptable for billing in federal Medicare and medicaid programs. The office shall specify a single uniform system for coding diagnoses, treatments, and procedures to be used as part of the uniform billing form formats. The system shall be acceptable for billing in federal Medicare and medicaid programs.

SEC. 169. Section 128725 of the Health and Safety Code is amended to read:

128725. The functions and duties of the commission shall include the following:

(a) Advise the office on the implementation of the new, consolidated data system.

(b) Advise the office regarding the ongoing need to collect and report health facility data and other provider data.

(c) Annually develop a report to the director of the office regarding changes that should be made to existing data collection systems and forms. Copies of the report shall be provided to the Senate Health and Human Services Committee and to the Assembly Health Committee.

(d) Advise the office regarding changes to the uniform accounting and reporting systems for health facilities.

(e) Conduct public meetings for the purposes of obtaining input from health facilities, other providers, data users, and the general public regarding this chapter and Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(f) Advise the Secretary of Health and Welfare on the formulation of general policies which shall advance the purposes of this part.

(g) Advise the office on the adoption, amendment, or repeal of regulations it proposes prior to their submittal to the Office of Administrative Law.

(h) Advise the office on the format of individual health facility or other provider data reports and on any technical and procedural issues necessary to implement this part.

(i) Advise the office on the formulation of general policies which shall advance the purposes of Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(j) Recommend, in consultation with a 12-member technical advisory committee appointed by the chairperson of the commission, to the office the data elements necessary for the production of outcome reports required by Section 128745.

(k) (1) The technical advisory committee appointed pursuant to subdivision (j) shall be composed of two members who shall be hospital representatives appointed from a list of at least six persons nominated by the California Association of Hospitals and Health Systems, two members who shall be physicians and surgeons appointed from a list of at least six persons nominated by the California Medical Association, two members who shall be registered nurses appointed from a list of at least six persons nominated by the California Nurses Association, one medical record practitioner who shall be appointed from a list of at least six persons nominated by the California Health Information Association, one member who shall be a representative of a hospital authorized to report as a group pursuant to subdivision (d) of Section 128760, two members who shall be representative of California research organizations experienced in effectiveness review of medical procedures or surgical procedures, or both procedures, one member representing the Health Access Foundation, and one member representing the Consumers Union. Members of the technical advisory committee shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the technical advisory committee.

(2) The commission shall submit its recommendation to the office regarding the first of the reports required pursuant to subdivision (a) of Section 128745 no later than January 1, 1993. The technical advisory committee shall submit its initial recommendations to the commission pursuant to subdivision (d) of Section 128750 no later than January 1, 1994. The commission, with the advice of the technical advisory committee, may periodically make additional recommendations under Sections 128745 and 128750 to the office, as appropriate.

(*l*) (1) Assess the value and usefulness of the reports required by Sections 127285, 128735, and 128740. On or before December 1, 1997, the commission shall submit recommendations to the office to accomplish all of the following:

(A) Eliminate redundant reporting.

(B) Eliminate collection of unnecessary data.

(C) Augment data bases as deemed valuable to enhance the quality and usefulness of data.

(D) Standardize data elements and definitions with other health data collection programs at both the state and national levels.

(E) Enable linkage with, and utilization of, existing data sets.

(F) Improve the methodology and data bases used for quality assessment analyses, including, but not limited to, risk-adjusted outcome reports.

(G) Improve the timeliness of reporting and public disclosure.

(2) The commission shall establish a committee to implement the evaluation process. The committee shall include representatives from the health care industry, providers, consumers, payers, purchasers, and government entities, including the Department of Managed Care, the departments that comprise the Health and Welfare Agency, and others deemed by the commission to be appropriate to the evaluation of the data bases. The committee may establish subcommittees including technical experts.

(3) In order to ensure the timely implementation of the provisions of the legislation enacted in the 1997–98 Regular Session that amended this part, the office shall present an implementation work plan to the commission. The work plan shall clearly define goals and significant steps within specified timeframes that must be completed in order to accomplish the purposes of that legislation. The office shall make periodic progress reports based on the work plan to the commission. The commission may advise the Secretary of Health and Welfare of any significant delays in following the work plan. If the commission determines that the office is not making significant progress toward achieving the goals outlined in the work plan, the commission shall notify the office and the secretary of that determination. The commission may request the office to submit a plan of correction outlining specific remedial actions and timeframes for compliance. Within 90 days of notification, the office shall submit a plan of correction to the commission.

(m) (1) As the office and the commission deem necessary, the commission may establish committees and appoint persons who are not members of the commission to these committees as are necessary to carry out the purposes of the commission. Representatives of area health planning agencies shall be invited, as appropriate, to serve on committees established by the office and the commission relative to the duties and responsibilities of area health planning agencies. Members of the standing committees shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of these committees.

(2) Whenever the office or the commission does not accept the advice of the other body on proposed regulations or on major policy

issues, the office or the commission shall provide a written response on its action to the other body within 30 days, if so requested.

(3) The commission or the office director may appeal to the Secretary of Health and Welfare over disagreements on policy, procedural, or technical issues.

SEC. 170. Section 740 of the Insurance Code is amended to read:

740. (a) Notwithstanding any other provision of law, and except as provided herein, any person or other entity that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the department unless the person or other entity shows that while providing the services it is subject to the jurisdiction of another agency of this or another state or the federal government.

(b) A person or entity may show that it is subject to the jurisdiction of another agency of this or another state or the federal government by providing to the commissioner the appropriate certificate or license issued by the other governmental agency that permits or qualifies it to provide those services for which it is licensed or certificated.

(c) Any person or entity that is unable to show that it is subject to the jurisdiction of another agency of this or another state or the federal government, shall submit to an examination by the commissioner to determine the organization and solvency of the person or the entity, and to determine whether the person or entity is in compliance with the applicable provisions of this code, and shall be required to obtain a certificate of authority to do business in California and be required to meet all appropriate reserve, surplus, capital, and other necessary requirements imposed by this code for all insurers.

(d) Any person or entity unable to show that it is subject to the jurisdiction of another agency of this or another state or the federal government shall be subject to all appropriate provisions of this code regarding the conduct of its business.

(e) The department shall prepare and maintain for public inspection a list of those persons or entities described in subdivision (a) that are not subject to the jurisdiction of another agency of this or another state or the federal government and that the department knows to be operating in this state. There shall be no liability of any kind on the part of the state, the department, and its employees for the accuracy of the list or for any comments made with respect to it.

(f) Any administrator licensed by the department who advertises or administers coverage in this state described in subdivision (a), that is provided by any person or entity described in subdivision (c), and where the coverage does not meet all pertinent requirements specified in this code and that is not provided or completely

underwritten, insured or otherwise fully covered by an admitted life or disability insurer, hospital service plan or health care service plan, shall advise and disclose to any purchaser, prospective purchaser, covered person or entity, and any production agency licensed by the department involved in the transaction, all financial and operational information relative to the content and scope of the plan and, specifically, as to the lack of insurance or other coverage.

Any production agency obtaining knowledge of any coverage relative to the content and scope of a hospital service plan or health care service plan, as required under this subdivision, shall advise and disclose to any purchaser, prospective purchaser, covered person or entity, the knowledge regarding the content and scope of the plan and, specifically, as to the lack of insurance by an admitted carrier or other qualified plan.

(g) A health care service plan, as defined in Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, shall not be subject to this section.

(h) The department shall notify, in writing, the Director of the Department of Managed Care whenever it determines that a multiple employer trust qualifies as a health care service plan subject to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(i) Any health care service plan, including a self-insured reimbursement plan that pays for or reimburses any part of the cost of health care services, operated by any city, county, city and county, public entity, or political subdivision, or a public joint labor management trust as described in subdivision (c) of Section 1349.2 of the Health and Safety Code, that is exempt pursuant to Section 1349.2 of the Health and Safety Code from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), is also exempt from this code.

SEC. 171. Section 742.407 of the Insurance Code is amended to read:

742.407. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a multiple employer welfare arrangement.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test

results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 172. Section 791.02 of the Insurance Code is amended to read:

791.02. As used in this act:

(a) (1) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

(C) Failure of an agent to apply for insurance coverage with a specific insurance institution which the agent represents and which is requested by an applicant.

(D) In the case of a property or casualty insurance coverage:

(i) Placement by an insurance institution or agent of a risk with a residual market mechanism, with an unauthorized insurer, or with an insurance institution which provides insurance to other than preferred or standard risks, if in fact the placement is at other than a preferred or standard rate. An adverse underwriting decision, in case of placement with an insurance institution which provides insurance to other than preferred or standard risks, shall not include such placement where the applicant or insured did not specify or apply for placement as a preferred or standard risk or placement with a particular company insuring preferred or standard risks, or

(ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.

(E) In the case of a life, health or disability insurance coverage, an offer to insure at higher than standard rates.

(2) Notwithstanding paragraph (1), any of the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(A) The termination of an individual policy form on a class or statewide basis.

(B) A declination of insurance coverage solely because such coverage is not available on a class or statewide basis.

(C) The rescission of a policy.

(b) "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(c) "Agent" means any person licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(d) "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(e) "Consumer report" means any written, oral or other communication of information bearing on a natural person's creditworthiness, credit standing, credit capacity, character, general

reputation, personal characteristics or mode of living which is used or expected to be used in connection with an insurance transaction.

(f) "Consumer reporting agency" means any person who:

(1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(2) Obtains information primarily from sources other than insurance institutions.

(3) Furnishes consumer reports to other persons.

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

(h) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(i) "Individual" means any natural person who:

(1) In the case of property or casualty insurance, is a past, present or proposed named insured or certificate holder;

(2) In the case of life or disability insurance, is a past, present or proposed principal insured or certificate holder;

(3) Is a past, present or proposed policyowner;

(4) Is a past or present applicant; or

(5) Is a past or present claimant; or

(6) Derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate subject to this act.

(j) "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance institution or insurance-support organization, other than:

(1) An agent,

(2) The individual who is the subject of the information, or

(3) A natural person acting in a personal capacity rather than in a business or professional capacity.

(k) "Insurance institution" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance, including medical service plans and hospital service plans. "Insurance institution" shall not include agents, insurance-support organizations, or group practice prepayment health care service plans regulated pursuant to the Knox-Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(*l*) "Insurance-support organization" means:

(1) Any person who regularly engages, in whole or in part, in the business of assembling or collecting information about natural

persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including:

(A) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction, or

(B) The collection of personal information from insurance institutions, agents or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(2) Notwithstanding paragraph (1), the following persons shall not be considered "insurance-support organizations": agents, governmental institutions, insurance institutions, medical care institutions, medical professionals, and peer review committees.

(m) "Insurance transaction" means any transaction involving insurance primarily for personal, family or household needs rather than business or professional needs which entails:

(1) The determination of an individual's eligibility for an insurance coverage, benefit or payment, or

(2) The servicing of an insurance application, policy, contract or certificate.

(n) "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information.

(o) "Medical care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled nursing facilities, home health agencies, medical clinics, rehabilitation agencies and public health agencies.

(p) "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, clinical psychologist, chiropractor, pharmacist, or speech therapist.

(q) "Medical record information" means personal information which:

(1) Relates to an individual's physical or mental condition, medical history or medical treatment, and

(2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent or legal guardian.

(r) "Person" means any natural person, corporation, association, partnership, limited liability company, or other legal entity.

(s) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction

from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics. "Personal information" includes an individual's name and address and "medical record information" but does not include "privileged information."

(t) "Policyholder" means any person who:

(1) In the case of individual property or casualty insurance, is a present named insured;

(2) In the case of individual life or disability insurance, is a present policyowner; or

(3) In the case of group insurance which is individually underwritten, is a present group certificate holder.

(u) "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(1) Pretends to be someone he or she is not,

(2) Pretends to represent a person he or she is not in fact representing,

(3) Misrepresents the true purpose of the interview, or

(4) Refuses to identify himself or herself upon request.

(v) "Privileged information" means any individually identifiable information that both:

(1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual.

(2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. However, information otherwise meeting the requirements of this division shall nevertheless be considered "personal information" under this act if it is disclosed in violation of Section 791.13.

(w) "Residual market mechanism" means the California FAIR Plan Association, Chapter 10 (commencing with Section 10101) of Part 1 of Division 2, and the assigned risk plan, Chapter 1 (commencing with Section 11550) of Part 3 of Division 2.

(x) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(y) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state.

(z) "Commissioner" means the Insurance Commissioner; except in the case of a person or entity subject to 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), and except as to any person defined in subdivision (k) when engaged in providing information or evaluation to a person or entity subject to the provisions of the Knox-Keene Health Care

Service Plan Act of 1975, and in such instances only, the term "commissioner" shall mean the Director of the Department of Managed Care.

(aa) "Insurance" includes a medical service or hospital service agreement or contract issued by a person or entity subject to 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).

SEC. 173. Section 1068 of the Insurance Code is amended to read:

1068. (a) As used in this section, the following definitions shall apply:

(1) "Health care service plan" means any plan as defined in Section 1345 of the Health and Safety Code, but this section does not apply to specialized health care service contracts.

(2) "Carrier" means a health care service plan, an insurer issuing group disability coverage which covers hospital, medical, or surgical expenses, a nonprofit hospital service plan, or any other entity responsible for either the payment of benefits for or the provision of hospital, medical, and surgical benefits under a group contract.

(3) "Insolvency" means that the Director of the Department of Managed Care has determined that the health care service plan is not financially able to provide health care services to its enrollees and (A) the Director of the Department of Managed Care has taken an action pursuant to Section 1386, 1391, or 1399 of the Health and Safety Code, or (B) an order requested by the Director of the Department of Managed Care or the Attorney General has been issued by the superior court under Section 1392, 1393, or 1394.1 of the Health and Safety Code.

(b) In the event of the insolvency of a health care service plan, upon order of the commissioner which shall be issued following his or her receipt of a notice issued by the Director of the Department of Managed Care pursuant to Section 1394.7 of the Health and Safety Code, any insurer, nonprofit hospital service plan, and any other entity, other than a health care service plan, responsible for either the payment of benefits for or the provision of hospital, medical, and surgical benefits under a group contract, that participated in the enrollment process with the insolvent health care service plan at the last regular open enrollment period of a group, shall offer enrollees of the group in the insolvent health care service plan a 30-day enrollment period commencing upon the date of insolvency. Each such carrier shall offer enrollees of the group in the insolvent health care service plan the same coverages and rates that it offered to enrollees of the group at the last regular open enrollment period of the group.

SEC. 174. Section 1068.1 of the Insurance Code is amended to read:

1068.1. (a) As used in this section:

(1) "Carrier" means a specialized health care service plan, and any of the following entities which offer coverage comparable to the coverages offered by a specialized health care service plan: an insurer issuing group disability coverage; a nonprofit hospital service plan; or other entity responsible for either the payment of benefits for or the provision of services under a group contract.

(2) "Insolvency" means that the Director of the Department of Managed Care has determined that the specialized health care service plan is not financially able to provide specialized health care services to its enrollees and (A) the Director of the Department of Managed Care has taken an action pursuant to Section 1386, 1391, or 1399 of the Health and Safety Code, or (B) an order requested by the commissioner or the Attorney General has been issued by the superior court under Section 1392, 1393, or 1394.1 of the Health and Safety Code.

(3) "Specialized health care service plan" means any plan authorized to issue only specialized health care service plan contracts as defined in Section 1345 of the Health and Safety Code.

(b) In the event of the insolvency of a specialized health care service plan, upon order of the commissioner which shall be issued following his or her receipt of a notice issued by the Director of the Department of Managed Care pursuant to Section 1394.8 of the Health and Safety Code, all carriers that participated in the enrollment process with the insolvent specialized health care service plan at a group's last regular open enrollment period for the same type of specialized health care service benefits shall offer the group's enrollees in the insolvent specialized health care service plan a 30-day enrollment period commencing upon the date of insolvency. Each such carrier shall offer enrollees of the insolvent specialized health care service plan the same specialized coverage and rates that it had offered to the enrollees of the group at its last regular open enrollment period.

SEC. 175. Section 10123.35 of the Insurance Code is amended to read:

10123.35. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a self-insured welfare benefit plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test

results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 176. Section 10140.1 of the Insurance Code is amended to read:

10140.1. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by an admitted insurer licensed to issue life or disability insurance, except life and disability income policies issued or delivered on or after January 1, 1995, that are contingent upon review or testing for other diseases or medical conditions.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics, of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 178. Section 10196 of the Insurance Code is amended to read:

10196. (a) The commissioner, with the advice of the Department of Managed Care, shall prepare a guide that explains the factors to be considered in selecting long-term care insurance and the consequences of particular clauses and exclusions. The guide shall be made available to the public and to interested organizations upon request. Any advertisement in this state dealing with long-term care insurance shall include notice of availability of this guide from the commissioner.

(b) For purposes of this section, "long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" does not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, or specified disease or accident coverage.

SEC. 179. Section 10270.98 of the Insurance Code is amended to read:

10270.98. Group disability policies may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage (other than individual policies or contracts) providing hospital, surgical or medical benefits, whether on an indemnity basis or a provision of service basis, resulting in such insured being eligible for more than 100 percent of the covered expenses.

Except as permitted by this section and by Section 10323, 10369.5, 10369.6, or 11515.5, and except in the case of group practice prepayment plan contracts which do not provide for coordination of benefits, to the extent they provide for a reduction of benefits on account of other coverage with respect to emergency services that are not obtained from providers that contract with the plan, no group or individual disability insurance policy or service contract issued by nonprofit hospital service plans operating under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 shall limit payment of benefits by reason of the existence of other insurance or service coverage.

The policy provisions authorized by this section shall contain a provision that payments of funds may be made directly between insurers and other providers of benefits. Such policy provisions shall also contain a provision that if benefits are provided in the form of services rather than cash payments the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid. The reasonable cash value of any contractual benefit provided to the insured in the form of service rather than cash payment by or through any hospital service organization or medical service organization or group-practice prepayment plan shall be deemed an expense incurred by the insured for such service, whether or not actually incurred, and the liability of the insurer shall be the same as if the insured had not been entitled to any such service benefit, unless the policy contains a provision authorized by Section 10323, 10369.5 or 10369.6 in the case of an individual disability policy, or by this section, in the case of a group disability policy.

This section shall not be construed to require that benefits payable under group disability policies be subject to reduction by the benefit amounts payable under Chapter 3 (commencing with Section 2800) of Part 2 of Division 1 of the Unemployment Insurance Code.

The provisions of this section, and all regulations adopted pursuant thereto pertaining to coordination of benefits with other group disability benefits, shall apply to all employers, labor-management trustee plans, union welfare plans (including those established in conformity with 29 U.S.C. Sec. 186), employer organization plans or employee benefit organization plans, health care service plan contracts, pursuant to regulations adopted by the Director of the Department of Managed Care which shall be uniform with those issued under this section for those plans that elect to coordinate benefits, group practice, individual practice, any other prepayment coverage for medical or dental care or treatment, and administrators, within the meaning of Section 1759 not otherwise subject to the provisions of this section whenever such plan, contract or practice provides or administers hospital, surgical, medical or dental benefits to employees or agents who are also covered under one or more additional group disability policies which are subject to this section or health care service plans.

SEC. 180. Section 10704 of the Insurance Code is amended to read:

10704. The commissioner may issue regulations that are necessary to carry out the purposes of this chapter. Prior to the public comment period required on the regulations under the Administrative Procedure Act, the commissioner shall provide the Director of the Department of Managed Care with a copy of the proposed regulations. The Director of the Department of Managed Care shall have 30 days to notify the commissioner in writing of any comments on the regulations. The Director of the Department of Managed Care's comments shall be included in the public notice issued on the regulations. Any rules and regulations issued pursuant to this subdivision may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Until December 31, 1994, the adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The regulations shall be enforced by the director.

SEC. 181. Section 10733 of the Insurance Code is amended to read:

10733. On or after the effective date of this chapter, the board shall enter into contracts with carriers for the purpose of providing health benefits coverage to eligible employees and dependents. Participating carriers shall have, but need not be limited to, all of the following operating characteristics satisfactory to the board:

(a) Strong financial condition, including the ability to assume the risk of providing and paying for covered services. A participating carrier may utilize reinsurance, provider risk sharing, and other appropriate mechanisms to share a portion of the risk.

(b) Adequate administrative management.

(c) In the case of the health care service plan, the following requirements must be met: (1) on the effective date of the contract, the health care service plan must be in compliance with the minimum tangible net equity requirements of the Director of the Department of Managed Care as those requirements will be in effect on January 1, 1995, and must remain in compliance with these requirements throughout the duration of the contract; (2) (A) before the effective date of the contract, the health care service plan must have devised a system for identifying in a simple and clear fashion both in its own records and in the medical records of subscribers and enrollees the fact that the services provided are provided under the program; and (B) throughout the duration of the contract, the health care service plan must use that system; and (3) at least 30 days before the effective date of any contract with the board, the health care service plan must inform the Director of the Department of Managed Care in writing of the health care service plan's intent to enter into the contract and must demonstrate in that

letter, to the satisfaction of the Director of the Department of Managed Care, that it has complied with the requirements of paragraphs (1) and (2).

(d) A satisfactory grievance procedure.

(e) Participating carriers that contract with or employ health care providers shall have mechanisms to accomplish all of the following, in a manner satisfactory to the board, in consultation with the carrier's licensing agency.

(1) Review the quality of care covered.

(2) Review the appropriateness of care covered.

(3) Provide accessible health care services.

SEC. 182. Section 10734 of the Insurance Code is amended to read:

10734. (a) Notwithstanding any other provision of law, the board shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Care, as the case may be.

(b) Participating carriers that contract with the program shall be licensed and in good standing with their licensing agencies.

SEC. 183. Section 10810 of the Insurance Code is amended to read:

10810. As used in this chapter:

(a) "Ancillary benefit plan" means a policy or contract written or administered by a participating carrier that covers dental or vision benefits for the covered eligible employees of an employer or small employer and their dependents.

(b) "Appropriate Regulatory Authority" means the Department of Insurance except for health care service plans, in which case it means the Department of Managed Care.

(c) "Benefit plan design" means a specific health coverage product issued by a carrier to employers or small employers, to trustees of associations, or to individuals if the coverage is offered through employment or sponsored by an employer or small employer. It includes the services covered and the levels of copayment and deductibles.

(d) "Board" means the governing body of the purchasing alliance. This term shall include the board of directors of a nonprofit corporation or trust, a for-profit corporation, the general partners of a partnership, or a sole proprietor.

(e) "Carrier" means any licensed disability insurance company or licensed health care service plan or any other entity that writes, issues, or administers any health benefit plan or ancillary benefit plan to employers or small employers in this state.

(f) "Commissioner" means the Insurance Commissioner, who shall have regulatory jurisdiction over purchasing alliances.

(g) "Dependent" has the same meaning as in the subdivision (a) of Section 1357 of the Health and Safety Code and in subdivision (e) of Section 10700 of this code.

(h) "Eligible employee" means any permanent employee who is actively engaged on a full-time basis in the conduct of business of the employer or small employer and, who has satisfied any employer or small employer waiting period requirements. The term includes sole proprietors or partners of a partnership if they are actively engaged on a full-time basis in the employer's or small employer's business, but does not include employees who work on a part-time, temporary, or substitute basis.

(i) "Employer" means any corporation, partnership, sole proprietorship, or other business entity doing business in this state that may be eligible to participate in a purchasing alliance. The term "employer" shall not include "small employer" as defined in subdivision (s).

(j) "Enrollee" means an eligible employee or a dependent of an eligible employee who is enrolled in a health benefit plan or ancillary benefit plan offered through the purchasing alliance by a participating carrier.

(k) "Health benefit plan" means a policy or contract written or administered by a participating carrier that arranges or provides health care benefits for the covered eligible employees of an employer or small employer and their dependents. The term does not include accident only, credit, dental, vision, disability income, or long-term care insurance, coverage issued as a supplement to liability insurance, automobile medical payments insurance, or insurance under which benefits are payable with or without regard to fault and is statutorily required to be continued in any liability insurance policy or equivalent self-insurance.

(*l*) "Management company" means the company under contract to the purchasing alliance to provide managerial services for the operation of the purchasing alliance.

(m) "Participating carrier" means a carrier that contracts with a purchasing alliance to provide coverage to enrollees under a health benefit plan or ancillary benefit plan.

(n) "Participating employer" means an employer or small employer who contracts with a purchasing alliance to provide coverage to the employer's or small employer's employees.

(o) "Purchasing alliance" means a non-risk-bearing entity issued a certificate of registration pursuant to this chapter to provide health benefits through multiple unaffiliated participating carriers to multiple participating employers, small employers and their employees within this state as authorized by the commissioner. That entity shall include nonprofit corporations, for-profit corporations, trusts, partnerships, and sole proprietorships.

(p) "Risk adjustment factor" for small employer benefit plan designs and contracts has the same meaning as in subdivision (j) of Section 1357 of the Health and Safety Code and in subdivision (u) of Section 10700 of this code.

(q) "Service region" means that portion of the state, designated by the commissioner pursuant to regulations as described in this chapter in which each purchasing alliance must fairly and affirmatively offer, market, and sell all of the health benefit plan designs offered through the purchasing alliance that are sold or offered to a small employer to all small employers.

(r) "Small employer" has the same meaning as in paragraph (1) of subdivision (*l*) of Section 1357 of the Health and Safety Code and in paragraph (1) of subdivision (w) of Section 10700 of this code.

(s) "Third-party administrator" means the company contracted by the purchasing alliance to provide administrative services for the purchasing alliance and that is licensed to provide those services by the department pursuant to Section 1759.10.

SEC. 184. Section 10820 of the Insurance Code is amended to read:

10820. (a) The commissioner shall regulate the establishment and conduct of purchasing alliances as set forth in this chapter.

(b) No person or entity may market, sell, offer, or contract for a package of one or more health benefit plans underwritten by two or more carriers to two or more employers or small employers or their eligible employees within a purchasing alliance without first being registered by the commissioner pursuant to this chapter. This subdivision does not apply to entities licensed by the Department of Managed Care as health care service plans or entities licensed by the Department of Insurance as disability insurers except that no licensed health care service plan or licensed disability insurer may be registered with the commissioner as a purchasing alliance. This chapter does not apply to any entity exempt pursuant to Section 1349.2 of the Health and Safety Code.

(c) A person or entity not registered by the commissioner as a purchasing alliance and engaged in the purchase, sale, marketing or distribution of health insurance or health care benefit plans shall not hold itself out as an alliance, health insurance purchasing alliance, purchasing alliance, health alliance, health insurance purchasing cooperative, or purchasing cooperative, or otherwise use a confusingly similar name.

(d) The commissioner shall establish six geographic service regions throughout which all purchasing alliances shall operate. These regions shall be established with no region smaller than an area in which the first three digits of all its postal ZIP Codes are in common within a county and shall divide no county into more than two service regions. Geographic service regions established pursuant to this section shall, as a group, cover the entire state, and the areas encompassed in geographic service regions shall be separate and distinct from regions encompassed in other geographic service regions. Geographic service regions may be noncontiguous.

(e) Nothing in this chapter shall be deemed to be in conflict with or limit the duties and powers granted to the commissioner under the laws of this state.

(f) Purchasing alliances shall report to the commissioner any suspected or alleged law violations of this chapter.

(g) Violations of this chapter shall be subject to the penalties outlined hereafter.

(h) The commissioner shall adopt reasonable rules and regulations as are necessary to administer this chapter.

(i) Nothing in this chapter shall be construed or interpreted to apply to an entity that has been approved by the Director of the Department of Managed Care, pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, to act as a solicitor and third-party administrator with respect to a multiple carrier or health care service plan marketing cooperative in which each carrier or health care service plan contracts directly with subscribing groups or individuals for the provision of health care, for the arranging for the provision of health care, or for the provision of coverage for health care.

SEC. 185. Section 10856 of the Insurance Code is amended to read:

10856. Nothing in this article shall be construed to limit the existing regulatory authority of the Department of Managed Care to regulate health care service plans or of the Department of Insurance to regulate disability or life insurers or hospital service plans. None of the requirements of this article shall conflict with the participating carrier's licensing requirements.

SEC. 186. Section 12693.36 of the Insurance Code is amended to read:

12693.36. (a) Notwithstanding any other provision of law, the board shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Care, as the case may be.

(b) Participating health, dental, and vision plans that contract with the program and are regulated by either the Insurance Commissioner or the Department of Managed Care shall be licensed and in good standing with their respective licensing agencies. In their application to the program, those entities shall provide assurance of their standing with the appropriate licensing entity.

(c) Local initiatives that have a contract with the State Department of Health Services, and that contract with the program, and that are licensed by the Department of Managed Care but do not have a commercial license from the Department of Managed Care, may contract with the board for a maximum of 18 months. During this 18-month period, those plans shall be in good standing with the Department of Managed Care and shall demonstrate to the board that they are making a good faith effort to obtain a commercial license with the Department of Managed Care. The board may

extend this period to 24 months if the board determines the additional time is necessary to comply with this requirement. In their application to the program, those entities shall provide assurance of their standing with the Department of Managed Care and shall outline their plans for obtaining commercial licensure.

(d) County organized health systems and the special health care authority established under Section 101675 of the Health and Safety Code that have a contract with the State Department of Health Services, and that contract with the program, and that are not licensed by either the Insurance Commissioner or the Department of Managed Care may contract with the board for a maximum of 24 months. During this 24-month period those plans shall be in good standing with the state agency providing oversight to their operations and shall demonstrate to the board that they are making a good faith effort to obtain licensure with the Department of Insurance or the Department of Managed Care. In their application to the program, those entities shall provide assurance of their standing with the appropriate state oversight entity and shall outline their plans for obtaining licensure from the Department of Insurance or the Department of Managed Care.

SEC. 187. Section 12693.365 of the Insurance Code is amended to read:

12693.365. Geographic managed care plans that have a contract with the Department of Health Services, that contract with the program, and that are licensed by the Department of Managed Care but do not have a commercial license from the Department of Managed Care, may contract with the board for a maximum of 12 months. During this 12-month period, those plans shall be required to be in good standing with the Department of Managed Care and shall demonstrate to the board that they are making a good faith effort to obtain a commercial license from the Department of Managed Care. In their application to the program, those plans shall provide assurance of their standing with the Department of Managed Care and shall outline their plans for obtaining commercial licensure.

SEC. 188. Section 12693.37 of the Insurance Code is amended to read:

12693.37. (a) The board shall contract with a broad range of health plans in an area, if available, to ensure that subscribers have a choice from among a reasonable number and types of competing health plans. The board shall develop and make available objective criteria for health plan selection and provide adequate notice of the application process to permit all health plans a reasonable and fair opportunity to participate. The criteria and application process shall allow participating health plans to comply with their state and federal licensing and regulatory obligations, except as otherwise provided in this chapter. Health plan selection shall be based on the criteria developed by the board.

(b) (1) In its selection of participating plans the board shall take all reasonable steps to assure the range of choices available to each applicant, other than a purchasing credit member, shall include plans that include in their provider networks and have signed contracts with traditional and safety net providers.

(2) Participating health plans shall be required to submit to the board on an annual basis a report summarizing their provider network. The report shall provide, as available, information on the provider network as it relates to:

(A) Geographic access for the subscribers.

(B) Linguistic services.

(C) The ethnic composition of providers.

(D) The number of subscribers who selected traditional and safety net providers.

(c) (1) The board shall not rely solely on the Department of Managed Care's determination of a health plan network's adequacy or geographic access to providers in the awarding of contracts under this part. The board shall collect and review demographic, census, and other data to provide to prospective local initiatives, health plans, or specialized health plans, as defined in this act, specific provider contracting target areas with significant numbers of uninsured children in low-income families. The board shall give priority to those plans, on a county-by-county basis, that demonstrate that they have included in their prospective plan networks significant numbers of providers in these geographic areas.

(2) Targeted contracting areas are those ZIP Codes or groups of ZIP Codes or census tracts or groups of census tracts that have a percentage of uninsured children in low-income families greater than the overall percentage of uninsured children in low-income families in that county.

(d) In each geographic area, the board shall designate a community provider plan that is the participating health plan which has the highest percentage of traditional and safety net providers in its network. Subscribers selecting such a plan shall be given a family contribution discount as described in Section 12693.43.

(e) The board shall establish reasonable limits on health plan administrative costs.

SEC. 189. Section 12695.18 of the Insurance Code is amended to read:

12695.18. "Participating health plan" means any of the following plans which are lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health care services under insurance policies or contracts, medical and hospital service arrangements, or membership contracts, in consideration of premiums or other periodic charges payable to it, and that contracts with the program to provide coverage to program subscribers:

(a) A private insurer holding a valid outstanding certificate of authority from the Insurance Commissioner.

(b) A nonprofit hospital service plan qualifying under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2.

(c) A nonprofit membership corporation lawfully operating under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of the Corporations Code).

(d) A health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code.

(e) A county or a city and county, in which case no license or approval from the Department of Insurance or the Department of Managed Care shall be required to meet the requirements of this part.

(f) A comprehensive primary care licensed community clinic that is an organized outpatient freestanding health facility and is not part of a hospital that delivers comprehensive primary care services, in which case, no license or approval from the Department of Insurance or the Department of Managed Care shall be required to meet the requirements of this part.

SEC. 190. Section 4600.5 of the Labor Code is amended to read:

4600.5. (a) Any health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, a disability insurer licensed by the Department of Insurance, or any entity, including, but not limited to, workers' compensation insurers and third-party administrators authorized by the administrative director under subdivision (e), may make written application to the administrative director to become certified as a health care organization to provide health care to injured employees for injuries and diseases compensable under this article.

(b) Each application for certification shall be accompanied by a reasonable fee prescribed by the administrative director, sufficient to cover the actual cost of processing the application. A certificate is valid for the period that the director may prescribe unless sooner revoked or suspended.

(c) If the health care organization is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Managed Care and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates

of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Managed Care in compliance with the Knox-Keene Health Care Service Plan Act, relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees in compliance with the requirements of this code.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1 of the Health and Safety Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(d) If the health care organization is a disability insurer licensed by the Department of Insurance, and is in compliance with subdivision (d) of Sections 10133 and 10133.5 of the Insurance Code, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Insurance and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Insurance in compliance with the Insurance Code relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to

verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(e) If the health care organization is a workers' compensation insurer, third-party administrator, or any other entity that the administrative director determines meets the requirements of Section 4600.6, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that it meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records relating to provider accessibility, peer review, utilization review, quality assurance, advertising, disclosure, medical and financial audits, and grievance systems, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(7) Complies with the following requirements:

(A) An organization certified by the administrative director under this subdivision may not provide or undertake to arrange for the provision of health care to employees, or to pay for or to reimburse any part of the cost of that health care in return for a prepaid or periodic charge paid by or on behalf of those employees.

(B) Every organization certified under this subdivision shall operate on a fee-for-service basis. As used in this section, fee for service refers to the situation where the amount of reimbursement paid by the employer to the organization or providers of health care is determined by the amount and type of health care rendered by the organization or provider of health care.

(C) An organization certified under this subdivision is prohibited from assuming risk.

(f) (1) A workers' compensation health care provider organization authorized by the Department of Corporations on December 31, 1997, shall be eligible for certification as a health care organization under subdivision (e).

(2) An entity that had, on December 31, 1997, submitted an application with the Commissioner of Corporations under Part 3.2 (commencing with Section 5150) shall be considered an applicant for certification under subdivision (e) and shall be entitled to priority in consideration of its application. The Commissioner of Corporations shall provide complete files for all pending applications to the administrative director on or before January 31, 1998.

(g) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(h) Charges for services arranged for or provided by health care service plans certified by this section and that are paid on a per-enrollee-periodic-charge basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(i) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(j) In consultation with interested parties, including the Department of Corporations and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(k) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of Managed Care, a workers' compensation health care provider

organization authorized by the Department of Corporations, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(*l*) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions. The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated chiropractor for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of chiropractic care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for chiropractic care in accordance with the health care organization's guidelines for chiropractic care established by paragraph (2).

Chiropractic utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for chiropractic care. Chiropractors affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of chiropractic care for work-related injuries, the review shall include review by a chiropractor affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to chiropractic care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for chiropractic care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(m) Individually identifiable medical information on patients submitted to the division shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) (1) When an injured employee requests acupuncture treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of an acupuncturist pursuant to guidelines for acupuncture care established by paragraph (2). Within five working days of the employee's request to see an acupuncturist, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated acupuncturist for work-related injuries that are within the guidelines for acupuncture care established by paragraph (2). Acupuncture care rendered in accordance with guidelines for acupuncture care established pursuant to paragraph (2) shall be provided by duly licensed acupuncturists affiliated with the plan.

(2) The health care organization shall establish guidelines for acupuncture care in consultation with affiliated acupuncturists who are participants in the health care organization's utilization review process for acupuncture care, which may include qualified medical evaluators. The guidelines for acupuncture care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated acupuncturist for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of acupuncture care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for acupuncture care in accordance with the health care organization's guidelines for acupuncture care established by paragraph (2).

Acupuncture utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for acupuncture care. Acupuncturists affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of acupuncture care for work-related injuries, the review shall include review by an acupuncturist affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to acupuncture care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for acupuncture care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

SEC. 191. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code. The Director of Consumer Affairs shall designate as peace officers seven persons who shall at the time of their designation be assigned to the investigations unit of the Board of Dental Examiners.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding

any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

(u) Investigators of the Department of Managed Care designated by the Director of the Department of Managed Care, provided that the primary duty of these investigators shall be the enforcement of the provisions of laws administered by the Director of the Department of Managed Care. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

SEC. 192. Section 5777 of the Welfare and Institutions Code is amended to read:

5777. (a) (1) Except as otherwise specified in this part, a contract entered into pursuant to this part shall include a provision that the mental health plan contractor shall bear the financial risk for

the cost of providing medically necessary mental health services to Medi-Cal beneficiaries irrespective of whether the cost of those services exceeds the payment set forth in the contract. If the expenditures for services do not exceed the payment set forth in the contract, the mental health plan contractor shall report the unexpended amount to the department, but shall not be required to return the excess to the department.

(2) If the mental health plan is not the county's, the mental health plan may not transfer the obligation for any mental health services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850).

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits, consistent with state and federal requirements, to the services to the Medi-Cal beneficiaries of that county regardless of where the beneficiary resides. The department shall require that the definition of medical necessity used, and the minimum scope of benefits offered, by each mental health contractor be the same, except to the extent that any variations receive prior federal approval and are consistent with state and federal statutes and regulation.

(b) Any contract entered into pursuant to this part may be renewed if the plan continues to meet the requirements of this part, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Contract renewal shall be on an annual basis. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract.

(c) (1) The obligations of the mental health plan shall be changed only by contract or contract amendment.

(2) A change may be made during a contract term or at the time of contract renewal, where there is a change in obligations required by federal or state law or when required by a change in the interpretation or implementation of any law or regulation. To the extent permitted by federal law and except as provided under subdivision (r) of Section 5778, if any change in obligations occurs that affects the cost to the mental health plan of performing under the terms of its contract, the department may reopen contracts to negotiate the state General Fund allocation to the mental health plan

under Section 5778, if the mental health plan is reimbursed through a fee-for-service payment system, or the capitation rate to the mental health plan under Section 5779, if the mental health plan is reimbursed through a capitated rate payment system. During the time period required to redetermine the allocation or rate, payment to the mental health plan of the allocation or rate in effect at the time the change occurred shall be considered interim payments and shall be subject to increase or decrease, as the case may be, effective as of the date on which the change is effective.

(3) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from an unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification of affected beneficiaries. The plan may request a public hearing by the Office of Administrative Hearings.

(e) A plan may terminate its contract in accordance with the provisions in the contract. The plan shall provide written notice to the department at least 180 days prior to the termination or nonrenewal of the contract.

(f) Upon the request of the Director of Mental Health, the Director of the Department of Managed Care may exempt a mental health plan contractor or a capitated rate contract from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). These exemptions may be subject to conditions the director deems appropriate. Nothing in this part shall be construed to impair or diminish the authority of the Director of the Department of Managed Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in this part be construed to reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Care promulgated thereunder. The Director of Mental Health, in consultation with the Director of the Department of Managed Care, shall analyze the appropriateness of licensure or application of applicable standards of the Knox-Keene Health Care Service Plan Act of 1975.

(g) The department, pursuant to an agreement with the State Department of Health Services, shall provide oversight to the mental health plans to ensure quality, access, and cost efficiency. At a minimum, the department shall, through a method independent of

any agency of the mental health plan contractor, monitor the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(h) County employees implementing or administering a mental health plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this part.

(i) If a county chooses to discontinue operations as the local mental health plan, the new plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) Nothing in this part shall be construed to modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter 3 (commencing with Section 5700) of Part 2. The county's maximum obligation for services to persons not eligible for Medi-Cal shall be no more than the amount of funds remaining in the mental health subaccount pursuant to Sections 17600, 17601, 17604, 17605, 17606, and 17609 after fulfilling the Medi-Cal contract obligations.

SEC. 193. Section 9541 of the Welfare and Institutions Code is amended to read:

9541. (a) The Legislature finds and declares that the purpose of the Health Insurance Counseling and Advocacy Program is to provide Medicare beneficiaries and those imminent of becoming eligible for Medicare with counseling and advocacy as to Medicare, private health insurance, and related health care coverage plans, on a statewide basis, and preserving service integrity.

(b) The department shall be responsible for, but not limited to, doing both of the following:

(1) To act as a clearinghouse for information and materials relating to Medicare, managed care, health and long-term care related life and disability insurance, and related health care coverage plans.

(2) To develop additional information and materials relating to Medicare, managed care, and health and long-term care related life and disability insurance, and related health care coverage plans, as necessary.

(c) Notwithstanding the terms and conditions of the contracts, direct services contractors shall be responsible for, but not limited to, all of the following:

(1) Community education to the public on Medicare, long-term care planning, private health and long-term care insurance, managed care, and related health care coverage plans.

(2) Counseling and informal advocacy with respect to Medicare, long-term care planning, private health and long-term care insurance, managed care, and related health care coverage plans.

(3) Referral services for legal representation or legal representation with respect to Medicare appeals, Medicare related

managed care appeals, and life and disability insurance problems. Legal services provided under this program shall be subject to the understanding that the legal representation and legal advocacy shall not include the filing of lawsuits against private insurers or managed health care plans. In the event that legal services are contracted for by the agency separately from counseling and education services, a formal system of coordination and referral from counseling services to legal services shall be established and maintained.

(4) Educational services supporting long-term care educational activities aimed at the general public, employers, employee groups, senior organizations, and other groups expressing interest in long-term care planning issues.

(5) Educational services emphasizing the importance of long-term care planning, promotion of self-reliance and independence, and options for long-term care.

(6) To the extent possible, support additional emphasis on community educational activities that would provide for announcements on television and in other media describing the limited nature of Medicare, the need for long-term care planning, the function of long-term care insurance, and the availability of counseling and educational literature on those subjects.

(7) Recruitment, training, coordination, and registration, with the department, of health insurance counselors, including a large contingent of volunteer counselors designed to expand services as broadly as possible.

(8) A systematic means of capturing and reporting all required community-based services program data, as specified by the department.

(d) Participants who volunteer their time for the health insurance counseling and advocacy program may be reimbursed for expenses incurred, as specified by the department.

(e) The department, the Department of Managed Care, and the Department of Insurance shall jointly develop interagency procedures for referring and investigating suspected instances of misrepresentation in advertising or sales of services provided by Medicare, managed health care plans, and life and disability insurers and agents.

(f) (1) No health insurance counselor shall provide counseling services under this chapter, unless he or she is registered with the department.

(2) No registered volunteer health insurance counselor shall be liable for his or her negligent act or omission in providing counseling services under this chapter. No immunity shall apply to health insurance counselors for any grossly negligent act or omission or intentional misconduct.

(3) No registered volunteer health insurance counselor shall be liable to any insurance agent, broker, employee thereof, or similarly situated person, for defamation, trade libel, slander, or similar actions

based on statements made by the counselor when providing counseling, unless a statement was made with actual malice.

(4) Prior to providing any counseling services, health insurance counselors shall disclose, in writing, to recipients of counseling services pursuant to this chapter that the counselors are acting in good faith to provide information about health insurance policies and benefits on a volunteer basis, but that the information shall not be construed to be legal advice, and that the counselors are, generally, not liable unless their acts and omissions are grossly negligent or there is intentional misconduct on the part of the counselor.

(5) The department shall not register any applicant under this section unless he or she has completed satisfactorily training which is approved by the department, and which shall consist of not less than 24 hours of training that shall include, but is not limited to, all of the following subjects:

(A) Medicare.

(B) Life and disability insurance.

(C) Managed care.

(D) Retirement benefits and principles of long-term care planning.

(E) Counseling skills.

(F) Any other subject or subjects determined by the department to be necessary to the provision of counseling services under this chapter.

(6) The department shall not register any applicant under this section unless he or she has completed all training requirements and has served an internship of cocounseling of not less than 10 hours with an experienced counselor and is determined by the local program manager to be capable of discharging the responsibilities of a counselor. An applicant shall sign a conflict of interest and confidentiality agreement, as specified by the department.

(7) A counselor shall not continue to provide health insurance counseling services unless he or she has received continuing education and training, in a manner prescribed by the department, on Medicare, managed care, life and disability insurance, and other subjects during each calendar year.

SEC. 194. Section 14087.32 of the Welfare and Institutions Code is amended to read:

14087.32. (a) Commencing on the date the authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until a commission established pursuant to Section 14087.31 is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, all of the following shall apply:

(1) The commission may select and design its automated management information system. The department, in cooperation

with the commission, prior to making capitated payments, shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the commission, and any other information that is generally required by the department in its contracts with other health care service plans.

(2) In addition to the reports required by the Department of Managed Care under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the rules of the Director of the Department of Managed Care promulgated thereunder, a commission established pursuant to Section 14087.31 shall provide, on a monthly basis, to the department, the Department of Managed Care, and the members of the commission, a copy of the automated report described in paragraph (1) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets of liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association or community clinic, which has contracted with the authority to provide health care services.

(3) In addition to the reporting and notification obligations the commission has under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, the chief executive officer or director of the commission shall immediately notify the department, the Department of Managed Care, and the members of the commission, in writing, of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the commission being unable to meet its financial obligations to health care providers or to other parties. The written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions which will be taken to address the anticipated consequences.

(4) The Department of Managed Care shall not, in any way, waive or vary, nor shall the department request the Department of Managed Care to waive or vary, the tangible net equity requirements for a commission under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, after three years from the date of commencement of capitated payments to the commission. Until the commission is in compliance with all of the tangible net equity requirements under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the rules of the Director of the Department of Managed Care adopted thereunder, the commission shall develop a stop-loss program appropriate to the risks of the commission, which program shall be satisfactory to both department and the Department of Managed Care.

(5) (A) If the commission votes to file a petition of bankruptcy, or the county board of supervisors notifies the department of its intent to terminate the commission, the department shall immediately transfer the authority's Medi-Cal beneficiaries as follows:

(i) To other managed care contractors, when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(ii) To the extent that other managed care contractors are unavailable or the department determines that it is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary.

(B) Beneficiary eligibility for Medi-Cal shall not be affected by actions taken pursuant to subparagraph (A).

(C) Beneficiaries who have been or who are scheduled to be transferred to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(6) (A) A commission established pursuant to Section 14087.31 shall submit to a review of financial records when the department determines, based on data reported by the commission or otherwise, that the commission will not be able to meet its financial obligations to health care providers contracting with the commission. Where the review of financial records determines that the commission will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the Director of Health Services shall immediately terminate the contract between the commission and the state, and immediately transfer the commission's Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers.

(B) The action of the Director of Health Services pursuant to subparagraph (A) shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action.

(C) Beneficiaries who have been or who are scheduled to be transferred under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a matter that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the commission shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the commission's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a commission is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the commission.

(9) Nothing in this section shall be construed to impair or diminish the authority of the Director of the Department Managed Care under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a commission licensed as a health care service plan to comply with the requirements of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code and the rules of the Director of the Department of Managed Care adopted thereunder.

(10) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the Public Records Act (Chapter 5 (commencing with Section 65250) of Division 7 of Title 1 of the Government Code), including but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the commission is required to prepare, produce or submit pursuant to this section.

SEC. 195. Section 14087.36 of the Welfare and Institutions Code is amended to read:

14087.36. (a) The following definitions shall apply for purposes of this section:

(1) "County" means the City and County of San Francisco.

(2) "Board" means the Board of Supervisors of the City and County of San Francisco.

(3) "Department" means the State Department of Health Services.

(4) "Governing body" means the governing body of the health authority.

(5) "Health authority" means the separate public agency established by the board of supervisors to operate a health care

system in the county and to engage in the other activities authorized by this section.

(b) The Legislature finds and declares that it is necessary that a health authority be established in the county to arrange for the provision of health care services in order to meet the problems of the delivery of publicly assisted medical care in the county, to enter into a contract with the department under Article 2.97 (commencing with Section 14093), or to contract with a health care service plan on terms and conditions acceptable to the department, and to demonstrate ways of promoting quality care and cost efficiency.

(c) The county may, by resolution or ordinance, establish a health authority to act as and be the local initiative component of the Medi-Cal state plan pursuant to regulations adopted by the department. If the board elects to establish a health authority, all rights, powers, duties, privileges, and immunities vested in a county under Article 2.8 (commencing with Section 14087.5) and Article 2.97 (commencing with Section 14093) shall be vested in the health authority. The health authority shall have all power necessary and appropriate to operate programs involving health care services, including, but not limited to, the power to acquire, possess, and dispose of real or personal property, to employ personnel and contract for services required to meet its obligations, to sue or be sued, and to take all actions and engage in all public and private business activities, subject to any applicable licensure, as permitted a health care service plan pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) (1) (A) The health authority shall be considered a public entity separate and distinct from the county and shall file the statement required by Section 53051 of the Government Code. The health authority shall have primary responsibility to provide the defense and indemnification required under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for employees of the health authority who are employees of the county. The health authority shall provide insurance under terms and conditions required by the county in order to satisfy its obligations under this section.

(B) For purposes of this paragraph, "employee" shall have the same meaning as set forth in Section 810.2 of the Government Code.

(2) The health authority shall not be considered to be an agency, division, department, or instrumentality of the county and shall not be subject to the personnel, procurement, or other operational rules of the county.

(3) Notwithstanding any other provision of law, any obligations of the health authority, statutory, contractual, or otherwise, shall be the obligations solely of the health authority and shall not be the obligations of the county, unless expressly provided for in a contract between the authority and the county, nor of the state.

(4) Except as agreed to by contract with the county, no liability of the health authority shall become an obligation of the county upon either termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

(e) (1) To the full extent permitted by federal law, the department and the health authority may enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program. The contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the department and the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, individuals employed by public agencies and private businesses, and uninsured or indigent individuals.

(2) Notwithstanding paragraph (1), or subdivision (f), the health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975 under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, including tangible net equity requirements applicable to a licensed health care service plan. This limitation shall not preclude the health authority from enrolling persons pursuant to the county's obligations under Section 17000, or from enrolling county employees.

(f) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons, subject to the provisions of any ordinances or resolutions passed by the county board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals employed by public agencies and private businesses.

(g) Upon creation, the health authority may borrow from the county and the county may lend the authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations or perform the activities of the health authority. Notwithstanding any other provision of law, both the county and the

health authority shall be eligible to receive funding under subdivision (p) of Section 14163.

(h) The county may terminate the health authority, but only by an ordinance approved by a two-thirds affirmative vote of the full board.

(i) Prior to the termination of the health authority, the county shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of notification to determine the liabilities and assets of the health authority. The department shall report its findings to the county and to the Department of Managed Care within 10 days of completion of the audit. The county shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department and the Department of Managed Care within 30 days upon receipt of these findings.

(j) Any assets of the health authority derived from the contract entered into between the state and the authority pursuant to Article 2.97 (commencing with Section 14093), after payment of the liabilities of the health authority, shall be disposed of pursuant to the contract.

(k) (1) The governing body shall consist of 18 voting members, 14 of whom shall be appointed by resolution or ordinance of the board as follows:

(A) One member shall be a member of the board or any other person designated by the board.

(B) One member shall be a person who is employed in the senior management of a hospital not operated by the county or the University of California and who is nominated by the San Francisco Section of the Westbay Hospital Conference or any successor organization, or if no such successor organization, a person who shall be nominated by the Hospital Council of Northern and Central California.

(C) Two members, one of whom shall be a person employed in the senior management of San Francisco General Hospital and one of whom shall be a person employed in the senior management of St. Luke's Hospital (San Francisco). If San Francisco General Hospital or St. Luke's Hospital, at the end of the term of the person appointed from its senior management, is not designated as a disproportionate share hospital, and if the governing body, after providing an opportunity for comment by the Westbay Hospital Conference, or any successor organization, determines that the hospital no longer serves an equivalent patient population, the governing body may, by a two-thirds vote of the full governing body, select an alternative hospital to nominate a person employed in its senior management to serve on the governing body. Alternatively, the governing body may

approve a reduction in the number of positions on the governing body as set forth in subdivision (p).

(D) Two members shall be employees in the senior management of either private nonprofit community clinics or a community clinic consortium, nominated by the San Francisco Community Clinic Consortium, or any successor organization.

(E) Two members shall be physicians, nominated by the San Francisco Medical Society, or any successor organization.

(F) One member shall be nominated by the San Francisco Labor Council, or any successor organization.

(G) Two members shall be persons nominated by the beneficiary committee of the health authority, at least one of whom shall, at the time of appointment and during the person's term, be a Medi-Cal beneficiary.

(H) Two members shall be persons knowledgeable in matters relating to either traditional safety net providers, health care organizations, the Medi-Cal program, or the activities of the health authority, nominated by the program committee of the health authority.

(I) One member shall be a person nominated by the San Francisco Pharmacy Leadership Group, or any successor organization.

(2) One member, selected to fulfill the appointments specified in subparagraph (A), (G), or (H) shall, in addition to representing his or her specified organization or employer, represent the discipline of nursing, and shall possess or be qualified to possess a registered nursing license.

(3) The initial members appointed by the board under the subdivision shall be, to the extent those individuals meet the qualifications set forth in this subdivision and are willing to serve, those persons who are members of the steering committee created by the county to develop the local initiative component of the Medi-Cal state plan in San Francisco. Following the initial staggering of terms, each of those members shall be appointed to a term of three years, except the member appointed pursuant to subparagraph (A) of paragraph (1), who shall serve at the pleasure of the board. At the first meeting of the governing body, the members appointed pursuant to this subdivision shall draw lots to determine seven members whose initial terms shall be for two years. Each member shall remain in office at the conclusion of that member's term until a successor member has been nominated and appointed.

(*l*) In addition to the requirements of subdivision (k), one member of the governing body shall be appointed by the Mayor of the City of San Francisco to serve at the pleasure of the mayor, one member shall be the county's director of public health or designee, who shall serve at the pleasure of that director, one member shall be the Chancellor of the University of California at San Francisco or his or her designee, who shall serve at the pleasure of the chancellor, and

one member shall be the county director of mental health or his or her designee, who shall serve at the pleasure of that director.

(m) There shall be one nonvoting member of the governing body who shall be appointed by, and serve at the pleasure of, the health commission of the county.

(n) Each person appointed to the governing body shall, throughout the member's term, either be a resident of the county or be employed within the geographic boundaries of the county.

(o) (1) The composition of the governing body and nomination process for appointment of its members shall be subject to alteration upon a two-thirds vote of the full membership of the governing body. This action shall be concurred in by a resolution or ordinance of the county.

(2) Notwithstanding paragraph (1), no alteration described in that paragraph shall cause the removal of a member prior to the expiration of that member's term.

(p) A majority of the members of the governing body shall constitute a quorum for the transaction of business, and all official acts of the governing body shall require the affirmative vote of a majority of the members present and voting. However, no official shall be approved with less than the affirmative vote of six members of the governing body, unless the number of members prohibited from voting because of conflicts of interest precludes adequate participation in the vote. The governing body may, by a two-thirds vote adopt, amend, or repeal rules and procedures for the governing body. Those rules and procedures may require that certain decisions be made by a vote that is greater than a majority vote.

(q) For purposes of Section 87103 of the Government Code, members appointed pursuant to subparagraphs (B) to (E), inclusive, of paragraph (1) of subdivision (k) represent, and are appointed to represent, respectively, the hospitals, private nonprofit community clinics, and physicians that contract with the health authority, or the health care service plan with which the health authority contracts, to provide health care services to the enrollees of the health authority or the health care service plan. Members appointed pursuant to subparagraphs (F) and (G) of paragraph (1) of subdivision (k) represent and are appointed to represent, respectively, the health care workers and enrollees served by the health authority or its contracted health care service plan, and traditional safety net and ancillary providers and other organizations concerned with the activities of the health authority.

(r) A member of the governing body may be removed from office by the board by resolution or ordinance, only upon the recommendation of the health authority, and for the following reasons:

(1) Failure to retain the qualifications for appointment specified in subdivisions (k) and (n).

(2) Death or a disability that substantially interferes with the member's ability to carry out the duties of office.

(3) Conviction of any felony or a crime involving corruption.

(4) Failure of the member to discharge legal obligations as a member of a public agency.

(5) Substantial failure to perform the duties of office, including, but not limited to, unreasonable absence from meetings. The failure to attend three meetings in a row of the governing body, or a majority of the meetings in the most recent calendar year, may be deemed to be unreasonable absence.

(s) Any vacancy on the governing body, however created, shall be filled for the unexpired term by the board by resolution or ordinance. Each vacancy shall be filled by an individual having the qualifications of his or her predecessor, nominated as set forth in subdivision (k).

(t) The chair of the authority shall be selected by, and serve at the pleasure of, the governing body.

(u) The health authority shall establish all of the following:

(1) A beneficiary committee to advise the health authority on issues of concern to the recipients of services.

(2) A program committee to advise the health authority on matters relating to traditional safety net providers, ancillary providers, and other organizations concerned with the activities of the health authority.

(3) Any other committees determined to be advisable by the health authority.

(v) (1) Notwithstanding any provision of state or local law, including, but not limited to, the county charter, a member of the health authority shall not be deemed to be interested in a contract entered into by the authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, or within the meaning of conflict-of-interest restrictions in the county charter, if all of the following apply:

(A) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(B) The member discloses the interest to the health authority and abstains from voting on the contract.

(C) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(D) The member has an interest in or was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(E) The contract authorizes the member or the organization the member has an interest in or represents to provide services to

beneficiaries under the authority's program or administrative services to the authority.

(2) In addition, no person serving as a member of the governing body shall, by virtue of that membership, be deemed to be engaged in activities that are inconsistent, incompatible, or in conflict with their duties as an officer or employee of the county or the University of California, or as an officer or an employee of any private hospital, clinic, or other health care organization. The membership shall not be deemed to be in violation of Section 1126 of the Government Code.

(w) Notwithstanding any other provision of law, those records of the health authority and of the health county that reveal the authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, or the health authority's peer review proceedings shall not be required to be disclosed pursuant to the California Public Records Act, Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(x) Notwithstanding any other provision of law, the health authority may meet in closed session to consider and take action on peer review proceedings and on matters pertaining to contracts and to contract negotiations by the health authority's staff with providers of health care services concerning all matters relating to rates of payment. However, a decision as to whether to enter into, amend the services provisions of, or terminate, other than for reasons based upon peer review, a contract with a provider of health care services, shall be made in open session.

(y) The health authority shall be deemed to be a public agency for purposes of all grant programs and other funding and loan guarantee programs.

(z) Contracts under this article between the State Department of Health Services and the health authority 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.

(aa) (1) The county controller or his or her designee, at intervals the county controller deems appropriate, shall conduct a review of the fiscal condition of the health authority, shall report the findings to the health authority and the board, and shall provide a copy of the findings to any public agency upon request.

(2) Upon the written request of the county controller, the health authority shall provide full access to the county controller all health authority records and documents as necessary to allow the county

controller or designee to perform the activities authorized by this subdivision.

(bb) A Medi-Cal recipient receiving services through the health authority shall be deemed to be a subscriber or enrollee for purposes of Section 1379 of the Health and Safety Code.

SEC. 196. Section 14087.37 of the Welfare and Institutions Code is amended to read:

14087.37. Commencing on the date that a health authority established pursuant to Section 14087.35 or 14087.36 first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until the time that the health authority is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, the following provisions shall apply:

(a) The health authority may select and design its automated management information system, but the department, in cooperation with the health authority, prior to making capitated payments shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the health authority and any other information generally required by the department in its contracts with health care service plans.

(b) In addition to the reports required by the Department of Managed Care under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Care promulgated thereunder, the health authority shall provide on a monthly basis to the department, the Department of Managed Care, and the members of the health authority, a copy of the automated report described in subdivision (a) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic, that has contracted with the health authority to provide health care services.

(c) In addition to the reporting and notification obligations the health authority has under the Knox-Keene Health Care Service Plan Act of 1975, the chief executive officer or director of the health authority shall immediately notify the department, the Department of Managed Care, and the members of the health authority in writing of any fact or facts that, in the chief executive officers' or director's reasonable and prudent judgment, is likely to result in the health authority being unable to meet its financial obligations to health care providers or to other parties. Written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions that will be taken to address the anticipated consequences.

(d) The Department of Managed Care shall not waive or vary, nor shall the department request the Department of Managed Care to waive or vary, the tangible net equity requirements for a health authority under the Knox-Keene Health Care Service Plan Act of 1975 after three years from the date of commencement of capitated payments to the health authority. Until the time the health authority is in compliance with all of the tangible net equity requirements under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Care promulgated thereunder, the health authority shall develop a stop-loss program appropriate to the risks of the health authority. The program shall be satisfactory to both the department and the Department of Managed Care.

(e) In the event that the health authority votes to file a petition of bankruptcy, or the board of supervisors notifies the department of its intent to terminate the health authority, the department shall immediately convert the health authority's Medi-Cal beneficiaries to either of the following:

(1) To other managed care contractors when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(2) To the extent that other managed care contractors are unavailable or the department determines that the action is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or if the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(f) The health authority shall submit to a review of financial records when the department determines, based on data reported by the health authority or otherwise, that the health authority will not be able to meet its financial obligations to health care providers contracting with the health authority. Where the review of financial records determines that the health authority will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the director shall immediately terminate the contract between the health authority and the state,

and immediately convert the health authority Medi-Cal beneficiaries in accordance with subdivision (e) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers. The action of the director shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted under subdivision (e) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(g) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the health authority shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the health authority's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(h) In the event a health authority is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the health authority.

(i) Nothing in this subdivision shall be construed to impair or diminish the authority of the Director of the Department of Managed Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a health authority licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Care promulgated thereunder.

SEC. 197. Section 14087.38 of the Welfare and Institutions Code is amended to read:

14087.38. (a) (1) In counties selected by the director with the concurrence of the county, a special county health authority may be established in order to meet the problems of delivery of publicly assisted medical care in each county, and to demonstrate ways of promoting quality care and cost efficiency. Nothing in this section shall be construed to preclude the department from expanding Medi-Cal managed care in ways other than those provided for in this section, including, but not limited to, the establishment of a public benefit corporation as set forth in Section 5110 of the Corporations Code.

(2) For purposes of this section "health authority" means an entity separate from the county that meets the requirements of state and federal law and the quality, cost, and access criteria established by the department.

(b) The board of supervisors of a county described in subdivision (a) may, by ordinance, establish a health authority to negotiate and enter into contracts authorized by Section 14087.3, and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county contracting with the department under this article shall be vested in the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, those entitled to coverage under other publicly supported programs, those employed by public agencies or private businesses, and uninsured or indigent individuals.

(c) The enabling ordinance shall specify the membership of the governing board of the health authority, the qualifications for individual members, the manner of appointment, selection, or removal of board members, and how long they shall serve, and any other matters the board of supervisors deems necessary or convenient for the conduct of the health authority's activities. Members of the governing board shall be appointed by the board of supervisors to represent the interests of the county, the general public, beneficiaries, physicians, hospitals, clinics, and other nonphysician health care providers. The health authority so established shall be considered an entity separate from the county, shall file a statement required by Section 53051 of the Government Code, and shall have the power to acquire, possess, and dispose of real or personal property, as necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of a health authority, statutory, contractual, or otherwise, shall be obligations solely of the health authority and shall not be the obligations of the county or of the state.

(d) Upon creation, the health authority may borrow from the county, and the county may lend the health authority funds or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(e) Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163, and the health authority shall be considered to have satisfied the requirements of that subdivision.

(f) The health authority shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(g) It is the intent of the Legislature that if a health authority is formed pursuant to this section, the county shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the health authority for contracts to provide health care services. Nothing in this subdivision shall be construed to interfere with or limit the health authority in giving preference in negotiating to disproportionate share hospitals or other providers of health care to medically indigent or uninsured individuals.

(h) Notwithstanding any other provisions of law, a member of the governing board of the health authority shall not be deemed to be interested in a contract entered into by the health authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all the following apply:

(1) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations, or beneficiaries.

(2) The contract authorizes the member or the organization the member represents to provide services to beneficiaries under the health authority's programs.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(4) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(5) The member discloses the interest to the health authority and abstains from voting on the contract.

(6) The governing board notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(i) All claims for money or damages against the health authority shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to the health authority.

(j) The health authority, members of its governing board, and its employees, are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the health authority.

(k) Notwithstanding any other provision of law, except as otherwise provided in this section, a county shall not be liable for any act or omission of the health authority.

(*l*) The transfer of responsibility for health care services to the health authority shall not relieve the county of its responsibility for indigent care pursuant to Section 17000.

(m) Notwithstanding any other provision of law, the governing board of the health authority may meet in closed session to consider and take action on matters pertaining to contracts, and to contract negotiations by health authority staff with providers of health care services concerning all matters related to rates of payment.

(n) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of law, any peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners, pursuant to the powers granted to the health authority. Any such peer review body and its members shall receive, to the fullest extent, all immunities, privileges, and protections available to those peer review bodies, their individual members, and persons or entities assisting in the peer review process, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(o) Notwithstanding any other provision of law, those records of the health authority and of the county that reveal the health authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, shall not be required to be disclosed pursuant to the California Public Records Act, Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(p) Notwithstanding the California Public Records Act, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of state or local law requiring disclosure of public records, those records of a peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, shall not be required to be disclosed. The

records and proceedings of any such peer review body and its individual members shall receive, to the fullest extent, all immunities, privileges, and protections available to those records and proceedings, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(q) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the California Public Records Act, including, but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the health authority is required to prepare, produce, or submit pursuant to this section.

(r) (1) Any health authority formed pursuant to this section shall obtain licensure as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code).

(2) Notwithstanding subdivisions (b) and (s), a health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975, including tangible net equity requirements applicable to a licensed health care service plan.

(s) Commencing on the date that the health authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until the time that the health authority is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, the following provisions shall apply:

(1) The health authority may select and design its automated management information system, but the department, in cooperation with the health authority, prior to making capitated payments shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the health authority and any other information generally required by the department in its contracts with health care service plans.

(2) In addition to the reports required by the Department of Managed Care under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Care promulgated thereunder, the health authority shall provide on a monthly basis to the department, the Department of Managed Care, and the members of the health authority, a copy of the automated report described in paragraph (1) and a projection of assets and liabilities, including those that have been incurred but not

reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic, that has contracted with the health authority to provide health care services.

(3) In addition to the reporting and notification obligations the health authority has under the Knox-Keene Health Care Service Plan Act of 1975, the chief executive officer or director of the health authority shall immediately notify the department, the Department of Managed Care, and the members of the governing board of the health authority in writing of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the health authority being unable to meet its financial obligations to health care providers or to other parties. Written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions that will be taken to address the anticipated consequences.

(4) The Department of Managed Care shall not waive or vary, nor shall the department request the Department of Managed Care to waive or vary, the tangible net equity requirements for a health authority under the Knox-Keene Health Care Service Plan Act of 1975 after three years from the date of commencement of capitated payments to the health authority. Until the time the health authority is in compliance with all of the tangible net equity requirements under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Care promulgated thereunder, the health authority shall develop a stop-loss program appropriate to the risks of the health authority. The program shall be satisfactory to both the department and the Department of Managed Care.

(5) In the event that the health authority votes to file a petition of bankruptcy, or the board of supervisors notifies the department of its intent to terminate the health authority, the department shall immediately convert the authority's Medi-Cal beneficiaries to either of the following:

(A) To other managed care contractors when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(B) To the extent that other managed care contractors are unavailable or the department determines that the action is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or if the department determines that providing care to any

particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(6) The health authority shall submit to a review of financial records when the department determines, based on data reported by the health authority or otherwise, that the health authority will not be able to meet its financial obligations to health care providers contracting with the health authority. Where the review of financial records determines that the health authority will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the director shall immediately terminate the contract between the health authority and the state, and immediately convert the health authority Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers. The action of the director shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the health authority shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the health authority's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a health authority is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the health authority.

(9) Nothing in this subdivision shall be construed to impair or diminish the authority of the Director of the Department of Managed Care under the Knox-Keene Health Care Service Plan Act of 1975,

nor shall anything in the section be construed to reduce or otherwise limit the obligation of a health authority licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the health commissioner of Corporations promulgated thereunder.

(t) In the event a health authority may no longer function for the purposes for which it is established, at the time the health authority's then-existing obligations have been satisfied or the health authority's assets have been exhausted, the board of supervisors may, by ordinance, terminate the health authority.

(u) (1) Prior to the termination of the health authority, the board of supervisors shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of the notification to determine the liabilities and assets of the health authority.

(2) The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department within 30 days upon receipt of these findings.

(v) Any assets of the health authority shall be disposed of pursuant to provisions contained in the contract entered into between the state and the health authority pursuant to this section.

(w) Upon termination of a health authority by the board, the county shall manage any remaining assets of the health authority until superseded by a department-approved plan. Any liabilities of the health authority shall not become obligations of the county upon either the termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

SEC. 198. 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 Director of the Department of Managed Care 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. 199. Section 14087.9705 of the Welfare and Institutions Code is amended to read:

14087.9705. (a) The commission shall obtain licensure as a health care service plan under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code.

(b) Commencing on the date that the commission first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and the commission is in full compliance with all of the requirements regarding tangible net equity applicable to a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, all of the following provisions shall apply:

(1) The commission is authorized to select and design its automated management information system, subject to the requirement that the department, in cooperation with the commission, prior to making capitated payments, approve the system. The department shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the commission, and any other information that is generally required by the department in its contracts with other local initiatives and with health care service plans.

(2) In addition to the reports required by the Department of Managed Care under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code and the rules of the Director of the Department of Managed Care adopted and promulgated thereunder, the commission shall provide, on a monthly basis, to the department, the Department of Managed Care, and the members of the commission a copy of the automated report described in subdivision (a) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets and liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic that has contracted with the commission to provide health care services.

(3) In addition to the reporting and notification requirements to which the commission is subject under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, the

chief executive officer or director of the commission shall immediately notify the department, the Department of Managed Care, and the members of the commission, in writing, of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the commission being unable to meet its financial obligations. The written notice shall describe the fact or facts, the anticipated financial consequences, and the actions that will be taken to address the anticipated consequences.

(4) In no event shall the Department of Managed Care waive or vary, nor shall the department request the Department of Managed Care to waive or vary, the tangible net equity requirements for a commission under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code after three years after the date of the commencement of capitated payments to the commission. Until the commission is in compliance with all of the tangible net equity requirements under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code and the rules of the Director of the Department of Managed Care adopted and promulgated thereunder, the commission shall develop a stop-loss program that is appropriate to the risks of the commission. The stop-loss program shall be subject to the approval of the department and the Department of Managed Care.

(5) In the event the commission votes to file a petition of bankruptcy, or the board of supervisors notifies the department that it intends to terminate the commission, the department shall immediately transfer the commission's Medi-Cal beneficiaries to other managed care contractors, when the contractors are available, and the contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees. To the extent that other managed care providers are unavailable or the department determines that the transfer to the other contractors to a fee-for-service reimbursement system is in the best interest of any particular beneficiary, the department shall make that transfer to the fee-for-service system, pending the availability of managed care contractors that can demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or until the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiaries who have been or who are scheduled to be transferred to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with federal freedom-of-choice requirements.

(6) The commission shall submit to a review of financial records when the department determines, based on data reported by the

commission or other data received by the department, that the commission will not be able to meet its financial obligations to health care providers contracting with the commission. If the department, pursuant to a review of financial records under this paragraph, determines that the commission will not be able to meet its financial obligation to contracting health care providers for the provision of health care services, the Director of Health Services shall immediately terminate the contract between the commission and the department and shall immediately transfer the commission's Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to beneficiaries and to minimize financial disruption. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be transferred under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the commission shall authorize the department to administer the number of covered Medi-Cal enrollments in a manner that ensures that the commission's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a commission is terminated, files for bankruptcy, or otherwise no longer functions for the purposes for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the commission.

(9) Nothing in this section shall be construed to impair or diminish the authority of the Director of the Department of Managed Care under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, nor shall any thing in this section be construed to reduce or otherwise limit the obligation of a commission licensed as a health care plan under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code to comply with the requirements of that chapter, and the rules of the Director of the Department of Managed Care adopted thereunder.

SEC. 200. Section 14088.19 of the Welfare and Institutions Code is amended to read:

14088.19. (a) The department may enter into primary care case management contracts pursuant to this article with any health care service plan that is licensed by the Director of the Department of

Managed Care pursuant to 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).

The terms of the contracts entered into pursuant to this section shall be exempt from those provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code that regulate health care service plan contracts. Nothing in this section shall preclude the Director of the Department of Managed Care from otherwise regulating a health care service plan subject to the Knox-Keene Health Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(b) When a health care service plan enters into a contract pursuant to this article and also pursuant to Chapter 8 (commencing with Section 14200), there shall be no duplication of service areas between the two contracts without prior written approval by the department.

SEC. 201. 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 Director of the Department of Managed Care 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, telephone number, and specialty, if any, of each primary care provider, and each clinic participating in each health care plan. This information shall be presented under geographic area designations in alphabetical order by the name of the primary care provider and clinic. 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 or clinic 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 or clinic 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) to (f), inclusive.

(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. 202. Section 14089.4 of the Welfare and Institutions Code is amended to read:

14089.4. The negotiator may consult with the Department of Insurance or the Department of Managed Care and shall consult with the Department of Justice Medi-Cal Fraud Unit, the appropriate licensing boards and the laboratory field services unit of the department for the purposes of determining the qualifications, performance capability, and financial stability of prospective contractors.

SEC. 203. 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 Director of the Department of Managed Care 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. 204. Section 14251 of the Welfare and Institutions Code is amended to read:

14251. "Prepaid health plan" means any plan which meets all of the following criteria:

(a) Licensed as a health care service plan by the Director of the Department of Managed Care pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340), Division 2, Health and Safety Code), other than a plan organized and operating pursuant to Section 10810 of the Corporations Code which substantially indemnifies subscribers or enrollees for the cost of provided services, or has an application for licensure pending and was registered under the Knox-Mills Health Plan Act prior to its repeal (Chapter 941, Statutes of 1975) or licensed as a nonprofit hospital service plan by the Insurance Commissioner pursuant to Section 11493(e) and Sections 11501 to 11505 of the Insurance Code.

(b) Meets the requirements for participation in the Medicaid Program (Title XIX of the Social Security Act) on an at risk basis.

(c) Agrees with the State Department of Health Services to furnish directly or indirectly health services to Medi-Cal beneficiaries on a predetermined periodic rate basis.

"Prepaid health plan" includes any organization which is licensed as a plan pursuant to the Knox-Keene Health Care Service Plan Act of 1975 and is subject to regulation by the Department of Managed Care pursuant to that act, and which contracts with the State Department of Health Services solely as a fiscal intermediary at risk.

Except for the requirement of licensure pursuant to the Knox-Keene Act, the State Director of Health Services may waive any provision of this chapter which the director determines is inappropriate for a fiscal intermediary at risk. Any such exemption or waiver shall be set forth in the fiscal intermediary at risk contract with the State Department of Health Services.

"Fiscal intermediary at risk" means any entity which entered into a contract with the State Department of Health Services on a pilot basis pursuant to subdivision (f) of Section 14000, as in effect June 1, 1973, in accordance with which the entity received capitated payments from the state and reimbursed providers of health care services on a fee-for-service or other basis for at least the basic scope of health care services, as defined in Section 14256, provided to all beneficiaries covered by the contract residing within a specified geographic region of the state. The fiscal intermediary at risk shall be at risk for the cost of administration and utilization of services or the cost of services, or both, for at least the basic scope of health care services, as defined in Section 14256, provided to all beneficiaries covered by the contract residing within a specified geographic region of the state. The fiscal intermediary at risk may share the risk with providers or reinsuring agencies or both. Eligibility of beneficiaries shall be determined by the State Department of Health

Services and capitation payments shall be based on the number of beneficiaries so determined.

SEC. 205. Section 14308 of the Welfare and Institutions Code is amended to read:

14308. (a) Each prepaid health plan shall furnish to the director such information and reports as required by Title XIX of the federal Social Security Act.

(b) The director may require a prepaid health plan to provide the director with information and reports which are furnished by the prepaid health plan to the Director of the Department of Managed Care pursuant to the provisions of Chapter 2.2 (commencing with Section 1340), Division 2, of the Health and Safety Code, the Knox-Keene Health Care Service Plan Act of 1975, or to the Insurance Commissioner pursuant to the provisions of Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate.

(c) The director may, by regulation, require plans to furnish statistical information to the extent such information is necessary for the department to establish rates of payment pursuant to Section 14301 and to provide reports pursuant to Section 14313. The department shall, to the extent feasible, accept this information in a form which is consistent with reports required to be provided pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate. In the case of a hospital based plan which is a health maintenance organization qualified pursuant to Title XIII of the federal Public Health Service Act, and which has more than one million enrollees, of whom less than 10 percent are Medi-Cal enrollees, information required pursuant to this subdivision shall consist of reports required to be made to the Department of Health, Education and Welfare pursuant to Title XIII of the federal Public Health Service Act.

SEC. 206. Section 14456 of the Welfare and Institutions Code is amended to read:

14456. The department shall conduct annual medical audits of each prepaid health plan unless the director determines there is good cause for additional reviews.

The reviews shall use the standards and criteria established pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate. Except in those instances where major unanticipated administrative obstacles prevent, or after a determination by the director of good cause, the reviews shall be scheduled and carried out jointly with reviews carried out pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate, if reviews

under either act will be carried out within time periods which satisfy the requirements of federal law.

The department shall be authorized to contract with professional organizations or the Department of Managed Care or the Department of Insurance, as appropriate, to perform the periodic review required by this section. The department, or its designee, shall make a finding of fact with respect to the ability of the prepaid health plan to provide quality health care services, effectiveness of peer review, and utilization control mechanisms, and the overall performance of the prepaid health plan in providing health care benefits to its enrollees.

SEC. 207. Section 14457 of the Welfare and Institutions Code is amended to read:

14457. In addition to the reviews required or authorized by Section 14456, the department shall conduct periodic onsite visits or additional visits after a determination by the director of good cause by departmental representatives to include observation of the general operation of the prepaid health plan, the condition of the facilities for delivering health care, the availability of emergency services, the degree of satisfaction of the enrollees, the operation of the plan's grievance system, and the administrative and financial aspects of the operation of the prepaid health plan.

Except when reviewing a plan's grievance system or marketing activities, this evaluation shall use standards and criteria established pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate. Except in those instances where major, unanticipated administrative obstacles prevent, or after a determination by the director of good cause, the visits shall be scheduled and carried out jointly with reviews carried out pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate, if reviews under either act will be carried out within time periods which satisfy the requirements of federal law.

The State Department of Health Services may contract with the Department of Managed Care or the Department of Insurance, as appropriate, to perform the periodic visits required by this section.

SEC. 208. Section 14459 of the Welfare and Institutions Code is amended to read:

14459. (a) The prepaid health plan shall maintain financial records and shall have an annual audit or additional audits after a determination by the director of good cause, performed by an independent certified public accountant. A prepaid health plan operated by a public entity shall have an annual audit performed in a manner approved by the department. All certified financial statements shall be filed with the department as soon as practical after the end of the prepaid health plan's fiscal year and in any event,

within a period not to exceed 90 days thereafter. These financial statements shall be filed with the department and shall be public records. The department shall perform routine auditing of prepaid health plan contractors and their affiliated subcontractors. Except in those instances where major unanticipated obstacles prevent, or after a determination by the director of good cause, the audits shall be scheduled and carried out jointly with audits carried out pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate, if audits under either act are carried out within time periods which satisfy the requirements of federal law. The department is authorized to contract with the Department of Managed Care or the Department of Insurance, as appropriate, to carry out the audits required by this section. The prepaid health plan shall make all of its books and records available for inspection, examination or copying by the department during normal working hours at the prepaid health plan's principal place of business or at such other place in California as the department shall designate. For good cause, the department may grant an exception to the time when annual financial statements are to be submitted to the department. The annual report required in Section 14313 shall include an itemization of expenditures made by each prepaid health plan for the following categories of expenditures: physician services, inpatient and outpatient hospital services, pharmaceutical services and prescription drugs, dental services, medical transportation services, vision care services, mental health services, laboratory services, X-ray services, enrollee education programs, marketing and enrollment costs, data-processing costs, other administrative costs and health service expenditures and any payments made to subcontractors, and the purposes of the payments, including but not limited to, contributions to election campaigns.

(b) The requirements of a financial and administrative review by the department of any health care service plan licensed by the Director of the Department of Managed Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code may be waived upon submission of the financial audit for the same period conducted by the Department of Managed Care pursuant to Section 1382 of the Health and Safety Code.

SEC. 209. Section 14460 of the Welfare and Institutions Code is amended to read:

14460. A schedule of reviews, visits, and audits shall be jointly established by the Department of Managed Care or the Department of Insurance, as the case may be, and the State Department of Health Services. Nothing in Section 14456, 14457, or 14459 shall be construed to prohibit the State Department of Health Services from conducting reviews, visits, or audits either jointly or individually, for the purpose of following up on findings resulting from reviews, visits, or audits carried out in accordance with this chapter.

SEC. 210. Section 14482 of the Welfare and Institutions Code is amended to read:

14482. No prepaid health plan shall contract with any subcontractor other than the plan's subsidiary corporation, its parent corporation, or another subsidiary of its parent corporation, or an affiliate of the prepaid health plan whose financial statements are consolidated with that of the prepaid health plan at the time of the annual audit by the independent auditors of the plan and when the quarterly and annual financial statements are filed with the Director of the Department of Managed Care, if any of the following persons connected with the plan have a substantial financial interest, as defined by Section 14478, in such subcontractor:

(a) Any person also having a substantial financial interest in the plan.

(b) Any director, officer, partner, trustee, or employee of the plan.

(c) Any member of the immediate family of any person designated in (a) or (b).

SEC. 211. Section 14499.71 of the Welfare and Institutions Code is amended to read:

14499.71. For the purposes of this article, "fiscal intermediary" means an entity that agrees to pay for covered services provided to Medi-Cal eligibles in exchange for a premium, subscription charge, or capitation payment; to assume an underwriting risk; and is either licensed by the Director of the Department of Managed Care under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) or is licensed as a nonprofit hospital service plan by the Insurance Commissioner pursuant to subdivision (e) of Section 11493 of the Insurance Code and Sections 11501 to 11505, inclusive, of the Insurance Code.

SEC. 212. Section 22005 of the Welfare and Institutions Code is amended to read:

22005. The department shall only certify long-term care insurance policies and health care service plan contracts which cover long-term care that provide all of the following:

(a) Individual case management by a coordinating entity designated or approved by the department.

(b) The levels and durations of benefits which meet minimum standards set by the department.

(c) Protection against loss of benefits due to inflation.

(d) A recordkeeping system including an explanation of benefit report on insurance payments or benefits which count toward Medi-Cal resource exclusion.

(e) Approval of the insurance policy by the Department of Insurance as meeting the requirements of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, excepting the requirements of Sections 10232.1, 10232.2, 10232.25, 10232.8, 10232.9, and 10232.92, or approval of the health care service

plan contract by the Department of Managed Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code as providing substantially equivalent coverage to that required by Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code.

(f) Compliance with any other requirements imposed by the department through regulations consistent with the purposes of this division.

SEC. 213. Section 22010 of the Welfare and Institutions Code is amended to read:

22010. An executive and legislative advisory task force shall be formed to provide advice and assistance in designing and implementing the California Partnership for Long-Term Care Pilot Program.

(a) The task force shall be composed of representatives, designated by the chief officer or director of their agency or department, of:

(1) The State Department of Health Services.

(2) The State Department of Social Services.

(3) The Department of Aging.

(4) The Department of Insurance.

(5) The Department of Managed Care.

(6) The Senate Office of Research.

(7) The Assembly Office of Research.

(b) The task force shall consult with persons knowledgeable of and concerned with long-term care, including, but not limited to:

(1) Consumers.

(2) Health care providers.

(3) Representatives of long-term care insurance companies and administrators of health care service plans which cover long-term care services.

(4) Providers of long-term care.

(5) Private employers.

(6) Academic specialists in long-term care and aging.

(7) Representatives of the public employees' and teachers' retirement systems.

SEC. 214. This act shall become effective on January 1, 2000, and shall become operative on the date that the Governor, by executive order, establishes the Department of Managed Care or July 1, 2000, whichever occurs first.

SEC. 215. (a) Subject to subdivision (b), any section of any act enacted by the Legislature during the 1999 calendar year that takes effect on or before January 1, 2000, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

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

(1) Every provision of this act that amends any section of, adds any section to, or repeals and adds any section of, the Health and Safety Code.

(2) Sections 1618.5 and 4382 of the Business and Professions Code, as amended by this act.

(3) Sections 43.98, 56.17, and 3296 of the Civil Code, as amended by this act.

(4) Sections 10821 and 13408.5 of the Corporations Code, as amended by this act.

(5) Sections 1322, 6253.4, 6254.5, 11552, 13975, 21661, 31696.1, 37615.1 of the Government Code, as amended by this act, and Section 13975.2 of the Government Code, as added by this act.

(6) Sections 740, 742.407, 1068, 1068.1, and 10856 of the Insurance Code, as amended by this act.

(7) Section 830.3 of the Penal Code, as amended by this act.

CHAPTER 526

An act to amend Sections 56.05, 56.10, 56.11, 56.12, 56.14, 56.30, 56.36, and 56.37 of, and to add Section 56.101 to, the Civil Code, to amend Section 1386 of, and to add Section 1364.5 to, the Health and Safety Code, and to amend Section 791.02 of the Insurance Code, relating to medical records.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 28, 1999.]

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

SECTION 1. Section 56.05 of the Civil Code is amended to read:

56.05. For purposes of this part:

(a) "Authorization" means permission granted in accordance with Section 56.11 or 56.21 for the disclosure of medical information.

(b) "Authorized recipient" means any person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.

(c) "Contractor" means any person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. "Contractor" shall not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to 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).

(d) "Health care service plan" means any entity regulated pursuant to 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).

(e) "Licensed health care professional" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(f) "Medical information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care or health care service plan regarding a patient's medical history, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity.

(g) "Patient" means any natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains.

(h) "Provider of health care" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Provider of health care" shall not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code.

SEC. 2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil

Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or

other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state

or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 3. Section 56.101 is added to the Civil Code, to read:

56.101. Every provider of health care, health care service plan, or contractor who creates, maintains, preserves, stores, abandons, or destroys medical records shall do so in a manner that preserves the confidentiality of the information contained therein. Any provider of health care, health care service plan, or contractor who negligently disposes, abandons, or destroys medical records shall be subject to the provisions of this part.

SEC. 4. Section 56.11 of the Civil Code is amended to read:

56.11. An authorization for the release of medical information by a provider of health care, a health care service plan, or contractor shall be valid if it:

(a) Is handwritten by the person who signs it or is in typeface no smaller than 8-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, a health care service plan, or a contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.

(4) The beneficiary or personal representative of a deceased patient.

(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, or contractor that may disclose the medical information.

(f) States the name or functions of the persons or entities authorized to receive the medical information.

(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the provider of health care, health care service plan, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

SEC. 5. Section 56.12 of the Civil Code is amended to read:

56.12. Upon demand by the patient or the person who signed an authorization, a provider of health care, a health care service plan, or contractor possessing the authorization shall furnish a true copy thereof.

SEC. 6. Section 56.14 of the Civil Code is amended to read:

56.14. A provider of health care, health care service plan, or contractor that discloses medical information pursuant to the authorizations required by this chapter shall communicate to the person or entity to which it discloses the medical information any limitations in the authorization regarding the use of the medical information. No provider of health care, health care service plan, or

contractor that has attempted in good faith to comply with this provision shall be liable for any unauthorized use of the medical information by the person or entity to which the provider, plan, or contractor disclosed the medical information.

SEC. 7. Section 56.30 of the Civil Code is amended to read:

56.30. The disclosure and use of the following medical information shall not be subject to the limitations of this part:

(a) (Mental health and developmental disabilities) Information and records obtained in the course of providing services under Division 4 (commencing with Section 4001), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) of the Welfare and Institutions Code.

(b) (Public social services) Information and records that are subject to Sections 10850, 14124.1, and 14124.2 of the Welfare and Institutions Code.

(c) (State health services, communicable diseases, developmental disabilities) Information and records maintained pursuant to former Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of the Health and Safety Code and pursuant to the Communicable Disease Prevention and Control Act (subdivision (a) of Section 27 of the Health and Safety Code).

(d) (Licensing and statistics) Information and records maintained pursuant to Division 2 (commencing with Section 1200) and Part 1 (commencing with Section 102100) of the Health and Safety Code; pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code; and pursuant to Section 8608, 8817, or 8909 of the Family Code.

(e) (Medical survey, workers' safety) Information and records acquired and maintained or disclosed pursuant to Sections 1380 and 1382 of the Health and Safety Code and pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

(f) (Industrial accidents) Information and records acquired, maintained, or disclosed pursuant to Division 1 (commencing with Section 50), Division 4 (commencing with Section 3201), Division 4.5 (commencing with Section 6100), and Division 4.7 (commencing with Section 6200) of the Labor Code.

(g) (Law enforcement) Information and records maintained by a health facility which are sought by a law enforcement agency under Chapter 3.5 (commencing with Section 1543) of Title 12 of Part 2 of the Penal Code.

(h) (Investigations of employment accident or illness) Information and records sought as part of an investigation of an on-the-job accident or illness pursuant to Division 5 (commencing with Section 6300) of the Labor Code or pursuant to Section 105200 of the Health and Safety Code.

(i) (Alcohol or drug abuse) Information and records subject to the federal alcohol and drug abuse regulations (Part 2 (commencing with Section 2.1) of subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations) or to Section 11977 of the Health and Safety Code dealing with narcotic and drug abuse.

(j) (Patient discharge data) Nothing in this part shall be construed to limit, expand, or otherwise affect the authority of the California Health Facilities Commission to collect patient discharge information from health facilities pursuant to Section 441.18 of the Health and Safety Code.

(k) Medical information and records disclosed to, and their use by, the Insurance Commissioner, the Director of the Department of Managed Care, the Division of Industrial Accidents, the Workers' Compensation Appeals Board, the Department of Insurance, or the Department of Managed Care.

SEC. 8. Section 56.36 of the Civil Code is amended to read:

56.36. (a) Any violation of the provisions of this part that results in economic loss or personal injury to a patient is punishable as a misdemeanor.

(b) In addition to any other remedies available at law, any individual may bring an action against any person or entity who has negligently released confidential information or records concerning him or her in violation of this part, for either or both of the following:

(1) Nominal damages of one thousand dollars ($1,000). In order to recover under this paragraph, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the patient.

(c) (1) In addition, any person or entity that negligently discloses medical information in violation of the provisions of this part shall also be liable, irrespective of the amount of damages suffered by the patient as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation.

(2) (A) Any person or entity, other than a licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable on a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation, or on a second violation for an administrative fine or civil penalty not to exceed ten thousand dollars ($10,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a

provider of health care that is not a licensed health care professional for any violation of this part.

(3) (A) Any person or entity, other than a licensed health care professional, who knowingly or willfully obtains or uses medical information in violation of this part for the purpose of financial gain shall be liable for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part for financial gain shall be liable on a first violation, for an administrative fine or civil penalty not to exceed five thousand dollars ($5,000) per violation, or on a second violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(4) Nothing in this subdivision shall be construed as authorizing an administrative fine or civil penalty under both paragraphs (2) and (3) for the same violation.

(5) Any person or entity who is not permitted to receive medical information pursuant to this part and who knowingly and willfully obtains, discloses, or uses medical information without written authorization from the patient shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation.

(d) In assessing the amount of an administrative fine or civil penalty pursuant to subdivision (c), the licensing agency or certifying board or court shall consider any one or more of the relevant circumstances presented by any of the parties to the case including, but not limited to, the following:

(1) Whether the defendant has made a reasonable, good faith attempt to comply with this part.

(2) The nature and seriousness of the misconduct.

(3) The harm to the patient, enrollee, or subscriber.

(4) The number of violations.

(5) The persistence of the misconduct.

(6) The length of time over which the misconduct occurred.

(7) The willfulness of the defendant's misconduct.

(8) The defendant's assets, liabilities, and net worth.

(e) (1) The civil penalty pursuant to subdivision (c) shall be assessed and recovered in a civil action brought in the name of the

people of the State of California in any court of competent jurisdiction by any of the following:

(A) The Attorney General.

(B) Any district attorney.

(C) Any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance.

(D) Any city attorney of a city.

(E) Any city attorney of a city and county having a population in excess of 750,000, with the consent of the district attorney.

(F) A city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county.

(2) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in paragraph (3), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

(3) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered.

(4) Nothing in this section shall be construed as authorizing both an administrative fine and civil penalty for the same violation.

(5) Imposition of a fine or penalty provided for in this section shall not preclude imposition of any other sanctions or remedies authorized by law.

(f) For purposes of this section, "knowing" and "willful" shall have the same meanings as in Section 7 of the Penal Code.

(g) No person who discloses protected medical information in accordance with the provisions of this part shall be subject to the penalty provisions of this part.

SEC. 9. Section 56.37 of the Civil Code is amended to read:

56.37. (a) No provider of health care, health care service plan, or contractor may require a patient, as a condition of receiving health care services, to sign an authorization, release, consent, or waiver that would permit the disclosure of medical information that otherwise may not be disclosed under Section 56.10 or any other provision of law. However, a health care service plan or disability insurer may require relevant enrollee or subscriber medical information as a condition of the medical underwriting process, provided that Sections 1374.7 and 1389.1 of the Health and Safety Code are strictly observed.

(b) Any waiver by a patient of the provisions of this part, except as authorized by Section 56.11 or 56.21 or subdivision (b) of Section

56.26, shall be deemed contrary to public policy and shall be unenforceable.

SEC. 10. Section 1364.5 is added to the Health and Safety Code, to read:

1364.5. (a) On or before July 1, 2001, every health care service plan shall file with the director a copy of their policies and procedures to protect the security of patient medical information to ensure compliance with the Confidentiality of Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code). Any amendment to the policies and procedures shall be filed in accordance with Section 1352.

(b) On and after July 1, 2001, every health care service plan shall, upon request, provide to enrollees and subscribers a written statement that describes how the contracting organization or health care service plan maintains the confidentiality of medical information obtained by and in the possession of the contracting organization or the health care service plan.

(c) The statement required by subdivision (b) shall be in at least 12-point type and meet the following requirements:

(1) The statement shall describe how the contracting organization or health care service plan protects the confidentiality of medical information pursuant to this article and inform patients or enrollees and subscribers that any disclosure of medical information beyond the provisions of the law is prohibited.

(2) The statement shall describe the types of personal information that may be collected and the type of sources that may be used to collect the information, the purposes for which the contracting organization or plan will obtain medical information from other health care providers.

(3) The statement shall describe the circumstances under which medical information may be disclosed without prior authorization, pursuant to Section 56.10 of the Civil Code.

(4) The statement shall describe how patients or enrollees and subscribers may obtain access to medical information created by and in the possession of the contracting organization or health care service plan, including copies of medical information.

(d) On and after July 1, 2001, every health care service plan shall include in its evidence of coverage or disclosure form the following notice, in 12-point type:

A STATEMENT DESCRIBING (NAME OR PLAN OR "OUR") POLICIES AND PROCEDURES FOR PRESERVING THE CONFIDENTIALITY OF MEDICAL RECORDS IS AVAILABLE AND WILL BE FURNISHED TO YOU UPON REQUEST.

SEC. 11. Section 1386 of the Health and Safety Code is amended to read:

1386. (a) The director 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 director 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 director:

(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 director.

(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 director.

(3) The 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 director pursuant to this chapter, or any order issued by the director.

(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 this 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 director 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 director 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 director 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.

(15) The plan violates the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(c) (1) The director 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. 12. Section 791.02 of the Insurance Code is amended to read:

791.02. As used in this act:

(a) (1) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

(C) Failure of an agent to apply for insurance coverage with a specific insurance institution that the agent represents and that is requested by an applicant.

(D) In the case of a property or casualty insurance coverage:

(i) Placement by an insurance institution or agent of a risk with a residual market mechanism, with an unauthorized insurer, or with an insurance institution that provides insurance to other than preferred or standard risks, if in fact the placement is at other than a preferred or standard rate. An adverse underwriting decision, in case of placement with an insurance institution which provides insurance to other than preferred or standard risks, shall not include such placement where the applicant or insured did not specify or apply for placement as a preferred or standard risk or placement with a particular company insuring preferred or standard risks, or

(ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.

(E) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(2) Notwithstanding paragraph (1), any of the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(A) The termination of an individual policy form on a class or statewide basis.

(B) A declination of insurance coverage solely because such coverage is not available on a class or statewide basis.

(C) The rescission of a policy.

(b) "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(c) "Agent" means any person licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(d) "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(e) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(f) "Consumer reporting agency" means any person who:

(1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(2) Obtains information primarily from sources other than insurance institutions.

(3) Furnishes consumer reports to other persons.

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

(h) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(i) "Individual" means any natural person who:

(1) In the case of property or casualty insurance, is a past, present or proposed named insured or certificate holder;

(2) In the case of life or disability insurance, is a past, present or proposed principal insured or certificate holder;

(3) Is a past, present or proposed policyowner;

(4) Is a past or present applicant;

(5) Is a past or present claimant; or

(6) Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this act.

(j) "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance institution, or insurance-support organization, other than:

(1) An agent,

(2) The individual who is the subject of the information, or

(3) A natural person acting in a personal capacity rather than in a business or professional capacity.

(k) "Insurance institution" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance. "Insurance institution" shall not include agents, insurance-support organizations, or health care service plans regulated pursuant to the Knox-Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(*l*) "Insurance-support organization" means:

(1) Any person who regularly engages, in whole or in part, in the business of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including:

(A) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction, or

(B) The collection of personal information from insurance institutions, agents, or other insurance-support organizations for the

purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(2) Notwithstanding paragraph (1), the following persons shall not be considered "insurance-support organizations": agents, governmental institutions, insurance institutions, medical care institutions, medical professionals, and peer review committees.

(m) "Insurance transaction" means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs that entails:

(1) The determination of an individual's eligibility for an insurance coverage, benefit, or payment, or

(2) The servicing of an insurance application, policy, contract, or certificate.

(n) "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning those items of information.

(o) "Medical care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled nursing facilities, home health agencies, medical clinics, rehabilitation agencies, and public health agencies.

(p) "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, clinical psychologist, chiropractor, pharmacist, or speech therapist.

(q) "Medical record information" means personal information that:

(1) Relates to an individual's physical or mental condition, medical history or medical treatment, and

(2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(r) "Person" means any natural person, corporation, association, partnership, limited liability company, or other legal entity.

(s) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. "Personal information" includes an individual's name and address and "medical record information" but does not include "privileged information."

(t) "Policyholder" means any person who:

(1) In the case of individual property or casualty insurance, is a present named insured;

(2) In the case of individual life or disability insurance, is a present policyowner; or

(3) In the case of group insurance, which is individually underwritten, is a present group certificate holder.

(u) "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(1) Pretends to be someone he or she is not,

(2) Pretends to represent a person he or she is not in fact representing,

(3) Misrepresents the true purpose of the interview, or

(4) Refuses to identify himself or herself upon request.

(v) "Privileged information" means any individually identifiable information that both:

(1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual.

(2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. However, information otherwise meeting the requirements of this division shall nevertheless be considered "personal information" under this act if it is disclosed in violation of Section 791.13.

(w) "Residual market mechanism" means the California FAIR Plan Association, Chapter 10 (commencing with Section 10101) of Part 1 of Division 2, and the assigned risk plan, Chapter 1 (commencing with Section 11550) of Part 3 of Division 2.

(x) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(y) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the director to transact the business of insurance in this state.

(z) "Commissioner" means the Insurance Commissioner.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 527

An act to amend Section 56.35 of, and to add Section 56.104 to, the Civil Code, relating to personal information.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 28, 1999.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Privacy is a fundamental right of Californians.

(b) Mental health treatment, in order to be effective, depends upon open communication based on the patient's trust in the practitioner.

(c) A relationship of trust can only be established if the patient is confident that access to his or her personal information will be limited and that the information will be protected to the fullest extent possible.

(d) In recognition of the fundamental importance of maintaining this relationship with patients, mental health practitioners are bound by professional codes of ethics and laws designed to protect sensitive information.

(e) As managed care has expanded in recent years, mental health professionals have been forced to choose between their obligation to protect the confidentiality of patient information and the demands of insurers and health care service plans that operate the health care system to obtain that information for administrative purposes other than authorization of treatment and payment of services.

(f) The inclusion of recognizable patient identification information in medical records obtained by health care service plans or insurers exposes sensitive identifying information about the patient, thereby jeopardizing the patient's privacy.

(g) Laws providing for the confidentiality of medical information should protect patients from the unlawful disclosure of their most personal information.

(h) Informed consent is appropriately given by the patient's signature on an authorization to release information that clearly and specifically states the information requested, the purpose for the request, the identity of those who will have access to the information, the date the authorization was signed, and an expiration date.

(i) Patients should not forfeit their right to confidentiality of their personal information to insurers or health care service plans for purposes other than those purposes authorized by law.

(j) Patient records often contain the names of, and personal information regarding, persons other than the patient and the privacy of those persons should also be protected.

SEC. 2. Section 56.104 is added to the Civil Code, to read:

56.104. (a) Notwithstanding subdivision (c) of Section 56.10, no provider of health care may release medical information to persons or entities authorized by law to receive that information pursuant to paragraphs (2), (3), and (7) to (10), inclusive, of, or to licensed health care service plans described in paragraph (4) of subdivision (c) of Section 56.10, if the requested information specifically relates to the patient's participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

(1) The specific information relating to a patient's participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.

(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.

(3) A statement that the information will not be used for any purpose other than its intended use.

(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this subdivision to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, "psychotherapist" means a person who is both a "psychotherapist" as defined in Section 1010 of the Evidence Code and a "provider of health care" as defined in subdivision (d) of Section 56.05 of the Civil Code.

(d) This section shall not apply to uses of the information related to law enforcement and investigations of crimes or investigations of unprofessional conduct under the Business and Professions Code.

(e) Nothing in this section shall be construed to grant any additional authority to a provider of health care to disclose information to a person or entity without the patient's consent.

SEC. 3. Section 56.104 is added to the Civil Code, to read:

56.104. (a) Notwithstanding subdivision (c) of Section 56.10, no provider of health care, health care service plan, or contractor may

release medical information to persons or entities authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient's participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

(1) The specific information relating to a patient's participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.

(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.

(3) A statement that the information will not be used for any purpose other than its intended use.

(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this section to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, "psychotherapist" means a person who is both a "psychotherapist" as defined in Section 1010 of the Evidence Code and a "provider of health care" as defined in subdivision (d) of Section 56.05 of the Civil Code.

(d) This section does not apply to the disclosure or use of medical information by a law enforcement agency or a regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(e) Nothing in this section shall be construed to grant any additional authority to a provider of health care, health care service plan, or contractor to disclose information to a person or entity without the patient's consent.

SEC. 4. Section 56.35 of the Civil Code is amended to read:

56.35. In addition to any other remedies available at law, a patient whose medical information has been used or disclosed in violation of

Section 56.10 or 56.104 or 56.20 or subdivision (a) of Section 56.26 and who has sustained economic loss or personal injury therefrom may recover compensatory damages, punitive damages not to exceed three thousand dollars ($3,000), attorneys' fees not to exceed one thousand dollars ($1,000), and the costs of litigation.

SEC. 5. Section 3 of this act shall become operative only if SB 19 of the 1999–2000 Regular Session is enacted and amends Section 56.10 of the Civil Code, in which case Section 2 shall not become operative.

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

CHAPTER 528

An act to amend Section 1345 of, and to add Section 1368.2 to, the Health and Safety Code, relating to health care.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 28, 1999.]

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

SECTION 1. Section 1345 of the Health and Safety Code is amended to read:

1345. As used in this chapter:

(a) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) "Basic health care services" means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance and ambulance transport services and out-of-area coverage. "Basic health care services" includes ambulance and ambulance transport services provided through the "911" emergency response system.

(7) Hospice care pursuant to Section 1368.2.

(c) "Enrollee" means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) "Evidence of coverage" means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) "Group contract" means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) "Health care service plan" or "specialized health care service plan" means either of the following:

(1) Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(2) Any person, whether located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who undertakes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee.

(g) "License" means, and "licensed" refers to, a license as a plan pursuant to Section 1353.

(h) "Out-of-area coverage," for purposes of paragraph (6) of subdivision (b), means coverage while an enrollee is anywhere outside the service area of the plan, and shall also include coverage for urgently needed services to prevent serious deterioration of an enrollee's health resulting from unforeseen illness or injury for which treatment cannot be delayed until the enrollee returns to the plan's service area.

(i) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(j) "Person" means any person, individual, firm, association, organization, partnership, business trust, foundation, labor organization, corporation, limited liability company, public agency, or political subdivision of the state.

(k) "Service area" means a geographical area designated by the plan within which a plan shall provide health care services.

(*l*) "Solicitation" means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(m) "Solicitor" means any person who engages in the acts defined in subdivision (1) of this section.

(n) "Solicitor firm" means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (1) of this section.

(o) "Specialized health care service plan contract" means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(p) "Subscriber" means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(q) Unless the context indicates otherwise, "plan" refers to health care service plans and specialized health care service plans.

(r) "Plan contract" means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(s) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean those financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the commissioner.

SEC. 2. Section 1368.2 is added to the Health and Safety Code, to read:

1368.2. (a) On and after January 1, 2002, every group health care service plan contract, except a specialized health care service plan contract, which is issued, amended, or renewed, shall include a provision for hospice care.

(b) The hospice care shall at a minimum be equivalent to hospice care provided by the federal Medicare program pursuant to Title XVIII of the Social Security Act.

(c) The following are applicable to this section and to paragraph (7) of subdivision (b) of Section 1345:

(1) The definitions in Section 1746.

(2) The "federal regulations" which means the regulations adopted for hospice care under Title XVIII of the Social Security Act in Title 42 of the Code of Federal Regulations, Chapter IV, Part 418, except Subparts A, B, G, and H, and any amendments or successor provisions thereto.

(d) The commissioner no later than January 1, 2001, shall adopt regulations to implement this section. The regulations shall meet all of the following requirements:

(1) Be consistent with all material elements of the federal regulations that are not by their terms applicable only to eligible Medicare beneficiaries. If there is a conflict between a federal regulation and any state regulation, other than those adopted pursuant to this section, the commissioner shall adopt the regulation that is most favorable for plan subscribers, members or enrollees to receive hospice care.

(2) Be consistent with any other applicable federal or state laws.

(3) Be consistent with the definitions of Section 1746.

(e) This section is not applicable to the subscribers, members, or enrollees of a health care service plan who elect to receive hospice care under the Medicare program.

(f) The commissioner, commencing on January 15, 2002, and on each January 15th thereafter, shall report to the Health Care Service Plan Advisory Committee any changes in the federal regulations that differ materially from the regulations then in effect for this section. The commissioner shall include with the report written text for proposed changes to the regulations then in effect for this section needed to meet the requirements of subdivision (d).

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.

CHAPTER 529

An act to add Sections 1347.15, 1375.4, 1375.5, and 1375.6 to, and to add and repeal Section 1349.3 of, the Health and Safety Code, relating to health.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 28, 1999.]

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

SECTION 1. Section 1347.15 is added to the Health and Safety Code, to read:

1347.15. (a) There is hereby established in the Department of Managed Care the Financial Solvency Standards Board composed of eight members. The members shall consist of the director, or the director's designee, and seven members appointed by the director. The seven members appointed by the director may be, but are not necessarily limited to, individuals with training and experience in the

following subject areas or fields: medical and health care economics; accountancy, with experience in integrated or affiliated health care delivery systems; excess loss insurance underwriting in the medical, hospital, and health plan business; actuarial studies in the area of health care delivery systems; management and administration in integrated or affiliated health care delivery systems; investment banking; and information technology in integrated or affiliated health care delivery systems. The members appointed by the director shall be appointed for a term of three years, but may be removed or reappointed by the director before the expiration of the term.

(b) The purpose of the board is to do all of the following:

(1) Advise the director on matters of financial solvency affecting the delivery of health care services.

(2) Develop and recommend to the director financial solvency requirements and standards relating to plan operations, plan-affiliate operations and transactions, plan-provider contractual relationships, and provider-affiliate operations and transactions.

(3) Periodically monitor and report on the implementation and results of the financial solvency requirements and standards.

(c) Financial solvency requirements and standards recommended to the director by the board may, after a period of review and comment not to exceed 45 days and, notwithstanding Section 1347, be noticed for adoption as regulations as proposed or modified under the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). During the director's 45-day review and comment period, the director, in consultation with the board, may postpone the adoption of the requirements and standards pending further review and comment. Within five business days of receipt by the director of the recommendation of the board, the director shall send an information only copy of the recommendations to the members of the Advisory Committee on Managed Care. Nothing in this subdivision prohibits the director from adopting regulations, including emergency regulations, under the rulemaking provisions of the Administrative Procedure Act.

(d) Except as provided in subdivision (e), the board shall meet at least quarterly and at the call of the chair. In order to preserve the independence of the board, the director shall not serve as chair. The members of the board may establish their own rules and procedures. All members shall serve without compensation, but shall be reimbursed from department funds for expenses actually and necessarily incurred in the performance of their duties.

(e) During the two years from the date of the first meeting of the board, the board shall meet monthly in order to expeditiously fulfill its purpose under subparagraphs (A) and (B) of paragraph (1) of subdivision (b).

(f) For purposes of this section, "board" means the Financial Solvency Standards Board.

SEC. 2. Section 1349.3 is added to the Health and Safety Code, to read:

1349.3. (a) On or after January 1, 2000, no license with waivers or limited license shall be issued to any person, including a provider or an affiliate of a provider, for the provision of, or the arranging, payment, or reimbursement for the provision of, health care services to enrollees of another plan under a contract or other arrangement whereby the person assumes financial risk for the provision of at least both physician services and hospital inpatient and ambulatory care services to the enrollees of the plan with which the person proposes to contract or make an arrangement. On and after January 1, 2000, no licensed health care service plan shall contract with any person, other than a licensed health care service plan or licensed health care service plan with waivers, for the assumption of financial risk with respect to the provision of both institutional and noninstitutional health care services and any other form of global capitation. Health care service plans with waivers or risk-bearing organizations, as defined in subdivision (g) of Section 1375.4, may contract with self-insured businesses if the self-insured business does no marketing to the general public.

(b) An applicant for a license with waivers or a limited license that has an application on file with the director on August 1, 1999, shall be entitled to a refund of the application filing fee paid as of January 1, 2000.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 3. Section 1375.4 is added to the Health and Safety Code, to read:

1375.4. (a) Every contract between a health care service plan and a risk-bearing organization that is issued, amended, renewed, or delivered in this state on or after July 1, 2000, shall include provisions concerning the following, as to the risk-bearing organization's administrative and financial capacity, which shall be effective as of January 1, 2001:

(1) A requirement that the risk-bearing organization furnish financial information to the health care service plan or the plan's designated agent and meet any other financial requirements that assist the health care service plan in maintaining the financial viability of its arrangements for the provision of health care services in a manner that does not adversely affect the integrity of the contract negotiation process.

(2) A requirement that the health care service plan disclose information to the risk-bearing organization that enables the risk-bearing organization to be informed regarding the financial risk assumed under the contract.

(3) A requirement that the health care service plans provide payments of all risk arrangements, excluding capitation, within 180 days after close of the fiscal year.

(b) In accordance with subdivision (a) of Section 1344, the director shall adopt regulations on or before June 30, 2000, to implement this section which shall, at a minimum, provide for the following:

(1) (A) A process for reviewing or grading risk-bearing organizations based on the following criteria:

(i) The risk-bearing organization meets criterion 1 if it reimburses, contests, or denies claims for health care services it has provided, arranged, or for which it is otherwise financially responsible in accordance with the timeframes and other requirements described in Section 1371 and in accordance with any other applicable state and federal laws and regulations.

(ii) The risk-bearing organization meets criterion 2 if it estimates its liability for incurred but not reported claims pursuant to a method that has not been held objectionable by the director, records the estimate at least quarterly as an accrual in its books and records, and appropriately reflects this accrual in its financial statements.

(iii) The risk-bearing organization meets criterion 3 if it maintains at all times a positive tangible net equity, as defined in subdivision (e) of Section 1300.76 of Title 10 of the California Code of Regulations.

(iv) The risk-bearing organization meets criterion 4 if it maintains at all times a positive level of working capital (excess of current assets over current liabilities).

(B) A risk-bearing organization may reduce its liabilities for purposes of calculating tangible net equity, pursuant to clause (iii) of subparagraph (A), and working capital, pursuant to clause (iv) of subparagraph (A), by the amount of any liabilities the payment of which is guaranteed by a sponsoring organization pursuant to a qualified guarantee. A sponsoring organization is one that has a tangible net equity of a level to be established by the director that is in excess of all amounts that it has guaranteed to any person or entity. A qualified guarantee is one that meets all of the following:

(i) It is approved by a board resolution of the sponsoring organization.

(ii) The sponsoring organization agrees to submit audited annual financial statements to the plan within 120 days of the end of the sponsoring organization's fiscal year.

(iii) The guarantee is unconditional except for a maximum monetary limit.

(iv) The guarantee is not limited in duration with respect to liabilities arising during the term of the guarantee.

(v) The guarantee provides for six months' advance notice to the plan prior to its cancellation.

(2) The information required from risk-bearing organizations to assist in reviewing or grading these risk-bearing organizations,

including balance sheets, claims reports, and designated annual, quarterly, or monthly financial statements prepared in accordance with generally accepted accounting principles, to be used in a manner, and to the extent necessary, provided to a single external party as approved by the director to the extent that it does not adversely affect the integrity of the contract negotiation process between the health care service plan and the risk-bearing organizations.

(3) Audits to be conducted in accordance with generally accepted auditing standards and in a manner that avoids duplication of review of the risk-bearing organization.

(4) A process for corrective action plans, as mutually agreed upon by the health care service plan and the risk-bearing organization and as approved by the director, for cases where the review or grading indicates deficiencies that need to be corrected by the risk-bearing organization, and contingency plans to ensure the delivery of health care services if the corrective action fails. The corrective action plan shall be approved by the director and standardized, to the extent possible, to meet the needs of the director and all health care service plans contracting with the risk-bearing organization. If the health care service plan and the risk-bearing organization are unable to determine a mutually agreeable corrective action plan, the director shall determine the corrective action plan.

(5) The disclosure of information by health care service plans to the risk-bearing organization that enables the risk-bearing organization to be informed regarding the risk assumed under the contract, including:

(A) Enrollee information monthly.

(B) Risk arrangement information, information pertaining to any pharmacy risk assumed under the contract, information regarding incentive payments, and information on income and expenses assigned to the risk-bearing organization quarterly.

(6) Periodic reports from each health care service plan to the director that include information concerning the risk-bearing organizations and the type and amount of financial risk assumed by them, and, if deemed necessary and appropriate by the director, a registration process for the risk-bearing organizations.

(7) The confidentiality of financial and other records to be produced, disclosed, or otherwise made available, unless as otherwise determined by the director.

(c) The failure by a health care service plan to comply with the contractual requirements pursuant to this section shall constitute grounds for disciplinary action. The director shall, as appropriate, within 60 days after receipt of documented validation from a risk-bearing organization, investigate and take enforcement action against a health care service plan that fails to comply with these requirements and shall periodically evaluate contracts between health care service plans and risk-bearing organizations to determine

if any audit, evaluation, or enforcement actions should be undertaken by the department.

(d) The Financial Solvency Standards Board established in Section 1347.1 shall study and report to the director on or before January 1, 2001, regarding all of the following:

(1) The feasibility of requiring that there be in force insurance coverage commensurate with the financial risk assumed by the risk-bearing organization to protect against financial losses.

(2) The appropriateness of different risk-bearing arrangements between health care service plans and risk-bearing organizations.

(3) The appropriateness of the four criteria specified in paragraph (1) of subdivision (b).

(e) This section shall not apply to specialized health care service plans.

(f) For purposes of this section, "provider organization" means a medical group, independent practice association, or other entity that delivers, furnishes, or otherwise arranges for or provides health care services, but does not include an individual or a plan.

(g) (1) For the purposes of this section, a "risk-bearing organization" means a professional medical corporation, other form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure pursuant to subdivision (l) of Section 1206, or another lawfully organized group of physicians that delivers, furnishes, or otherwise arranges for or provides health care services, but does not include an individual or a health care service plan, and that does all of the following:

(A) Contracts directly with a health care service plan or arranges for health care services for the health care service plan's enrollees.

(B) Receives compensation for those services on any capitated or fixed periodic payment basis.

(C) Is responsible for the processing and payment of claims made by providers for services rendered by those providers on behalf of a health care service plan that are covered under the capitation or fixed periodic payment made by the plan to the risk-bearing organization. Nothing in this subparagraph in any way limits, alters, or abrogates any responsibility of a health care service plan under existing law.

(2) Notwithstanding paragraph (1), risk-bearing organizations shall not be deemed to include a provider organization that meets either of the following requirements:

(A) The health care service plan files with the department consolidated financial statements that include the provider organization.

(B) The health care service plan is the only health care service plan with which the provider organization contracts for arranging or providing health care services and, during the previous and current fiscal years, the provider organization's maximum potential expenses for providing or arranging for health care services did not exceed 115

percent of its maximum potential revenue for providing or arranging for those services.

(h) For purposes of this section, "claims" include, but are not limited to, contractual obligations to pay capitation or payments on a managed hospital payment basis.

SEC. 4. Section 1375.5 is added to the Health and Safety Code, to read:

1375.5. (a) Except as provided in subdivision (b), no contract between a risk-bearing organization and a health care service plan that is issued, amended, delivered, or renewed in this state on or after July 1, 2000, shall include any provision that requires the risk-bearing organization to be at financial risk for the provision of health care services, unless the provision has first been negotiated and agreed to between the health care service plan and the risk-bearing organization.

(b) Notwithstanding subdivision (a), this section shall not prevent a risk-bearing organization from accepting the financial risk specified in subdivision (a) pursuant to a contract that meets the requirements of Section 1375.4.

SEC. 5. Section 1375.6 is added to the Health and Safety Code, to read:

1375.6. No contract between a risk-bearing organization and a health care service plan that is issued, amended, delivered, or renewed in this state on or after July 1, 2000, shall include any provision that requires a provider to accept rates or methods of payment specified in contracts with health care service plan affiliates or nonaffiliates unless the provision has been first negotiated and agreed to between the health care service plan and the risk-bearing organization.

SEC. 6. For purposes of Sections 1347.1, 1349.3, 1375.4, 1375.5, and 1375.6, until the Department of Managed Care and the position of the Director of the Department of Managed Care is established by legislative enactment or Executive order by July 1, 2000, the terms "department" and "director" shall mean the Department of Corporations and the Commissioner of Corporations, respectively.

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.